Geographic market segregation—evidence from the North-East

Introduction

1. We have looked in particular detail at the relationship in the North-East between ANE and GNE between late 2006, when ANE launched a new service between [X] and [Location A], and 2010 when ANE and GNE entered into linked sales and purchases of services and related assets in Ashington and Hexham.

2. In order to understand the events that unfolded in the North-East in the period from 2006 to 2010, we have examined the decision-making processes of the companies concerned in detail. The relevant individuals, identified in this document are:

   (a) [Senior Manager 1, Arriva UK Bus];

   (b) [OpCo Manager 1, GNE];

   (c) [Senior Manager 2, Go-Ahead] [X];

   (d) [Senior Manager 3, Arriva];

   (e) [OpCo Manager 2, ANE] [X];

   (f) [OpCo Manager 3, ANE] [X]; and

   (g) [OpCo Manager 4, ANE] [X].


4. In investigating the relationship between ANE and GNE we have reviewed a large number of documents generated by them and others, including emails, strategy papers, board minutes, diaries, correspondence, compliance records and file notes.
We have held hearings with Go-Ahead, with Arriva and with [OpCo Manager 3, ANE].
The review and the hearings took place in the late summer and early autumn of 2011 after important information came to light in July 2011. Recollections of the course of events has varied significantly between individuals. A number of representations made to us at hearings have, regrettably, had to be corrected. We recognize that some of the events investigated took place five years or so ago and that memories do fade. Consequently it has been difficult to form a clear picture of some elements of the dealings between GNE and ANE and in the time available it has not been possible to resolve every last detail of their relationship. We recognize too that the relationship between the two companies between 2006 and 2010 was conducted at different times by different individuals and at different levels of the two organizations and that within each organization different people will have had differing objectives. We also recognize that ANE and GNE may have had different objectives even when they were entering into an agreement and that their respective perceptions of events, and in particular of each other’s strategy, may have been different and sometimes mistaken. Indeed one of the notable features of the period is the extent to which ANE and GNE seemed to misinterpret each other’s activities. Nonetheless, a reasonably clear overall picture has emerged.

5. One valuable source of information about the events described in this appendix is a series of ten file notes prepared by [OpCo Manager 1, GNE] between August 2006 and August 2009 (the DD notes). These notes which came to light in July 2011 were prepared for two purposes. One was to keep [Senior Manager 2, Go-Ahead] updated during the period covered by the notes. Another was to provide Dickinson Dees with information to allow it to advise on developments between GNE and ANE and in particular on the Transactions. For at least part of the period with which we are concerned, it was jointly instructed by GNE and ANE to advise on the Transactions. The DD notes were designed to record GNE’s relationship with ANE from the
perspective of GNE’s senior management and were written at or around the time of the events they describe. They do of course reflect the particular perspective of their author. However, we consider that because of the purpose for which they were prepared they represent at least an attempt to provide a reasonably full and accurate picture of the facts and their author’s views.

6. We have endeavoured to cross-check the dates of all service registrations with publicly available Vehicle and Operator Services Agency (VOSA) records. Where there are inconsistencies between a party’s recollection and VOSA’s records, we highlight these inconsistencies in the text.

**Strategic background**

7. In our Tyneside case study (provisional findings, Appendix 6(4), paragraph 73), we explained how, following the deregulation of the bus industry, the three major municipal operations in Newcastle, South Shields and Sunderland passed into private ownership. Subsequently they each became parts of large national operators. Busways was sold to its management and employees. In 1994 it was acquired by Stagecoach. The former United Bus Company, a largely rural NBC subsidiary with urban operations in Gateshead, was acquired by Arriva. The Northern General Transport Company was bought by its management in 1986 and was subsequently acquired by Go-Ahead.

8. Go-Ahead operates the largest network of depots in Tyne and Wear through its Go North East OpCo (GNE). It has six depots: Gateshead Metro, Gateshead Saltmeadows Road, Percy Main, Winlaton, Chester-le-Street, Washington and Deptford. In the North-East outside of Tyne and Wear, it has depots at Peterlee, Chester-le-Street, and Consett (all in County Durham) and at Hexham in

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Northumberland. Stagecoach operates four depots (at Walkergate, Slatyford, South Shields and Sunderland). ANE operates one depot in the Tyne and Wear metropolitan area in Newcastle but its operations in the North-East cover Tyne and Wear, Northumberland, Middlesbrough, Sunderland, Stockton, Hartlepool, Co Durham and Darlington. In 2010, it acquired GNE’s operation at Ashington. Maps of the networks of Arriva, Go-Ahead and Stagecoach in Tyne and Wear are found in Annex 1.

**ANE’s strategy**

9. [OpCo Manager 3, ANE] told us at a hearing that, [ ], the focus of the operators in the North-East was on fulfilling customer needs and ensuring consistent delivery, through investment in vehicles, training of front-line staff, ticketing, marketing and publicity, and engagement with the local community. The network of services in Tyne and Wear had changed little since 1987, apart from a decline in the number of Sunday and evening services, and Arriva believed that the best way to retain customers was to create stability in the market place.

10. [OpCo Manager 3, ANE] told us that Arriva monitored its competitors. However, it sought to grow patronage on its existing services because of the general decline in patronage driven by a declining total population, the decline of traditional industries, above-average increase in car ownership, and the growth in business parks and out-of-town centres easily accessible by car. [OpCo Manager 3, ANE’s] explanation of Arriva’s strategy to reverse this decline was to try to persuade existing passengers to make more journeys by bus rather than to try to win new passengers. The company monitored its market share constantly and sought to grow its share across commercial and tendered services, although Arriva had only a relatively small share of tendered services.
11. Where there were overlaps with other operators, Arriva focused on delivering a punctual service, on operating modern and clean buses, on staff presentation and on effective promotion. Operators might seek to gain a competitive advantage by ‘tweaking’ services, for example by diverting a route to serve a housing estate which might have been solely served by the other operator previously but typically there was no obvious gap in the networks.

12. [Senior Manager 1, Arriva] told us that [OpCo Manager 3, ANE]. By contrast, [OpCo Manager 2, ANE], centred on the rationalization of the North-East portfolio of depots. This was expected to deliver £ in incremental profit for a business that had a profit before tax of £. As [Senior Manager 1, Arriva] put it, ‘in effect, one was the profit of the company, not through new growth initiatives encroaching on other markets but actually ensuring that we have the most efficient back office and that the assets that we have are sweating as effectively as they possibly can’. We note that in neither case did the strategies make a priority of the acquisition of new customers by entry on to and completion with rivals’ services.

13. [OpCo Manager 3, ANE] told us that growth opportunities outside of existing routes would come from new developments, such as new business parks that would require a new public transport link. One example of such a development was the Great Park, a new housing area to the north of Newcastle. To grow in a new area, which was served by an operator with a large market share would require large-scale entry and therefore the availability of spare buses and spare depot capacity. Because Arriva had reduced the number of operating sites considerably, it had a very limited ability to mount large-scale operations outside of its normal operating areas from its existing bases. Although it could have set up new facilities, [OpCo Manager 3, ANE] said that there was the additional barrier created by network tickets, which led to increased
customer loyalty. In particular, GNE had a very well developed and well marketed multi-journey ticket. He said that another consideration was the prospect of retaliation by the incumbent operator. This could involve fare reduction or launching a new service against Arriva on a route where Arriva would not have been experiencing competition previously.

14. [OpCo Manager 3, ANE] believed that other operators had a similar focus, but noted that there had been a distinct change in GNE’s commercial approach following the arrival of [OpCo Manager 1, GNE].

**GNE’s strategy**

15. [OpCo Manager 1, GNE] told us that he was appointed to GNE to develop a new approach for the business, because performance had been declining and Arriva had increased its market share through competitive actions and incursions. [X] had felt that GNE had not had a sufficiently aggressive commercial strategy.

16. Upon his appointment in [X], [OpCo Manager 1, GNE] developed a new strategy aimed at delivering operating cost reductions and improved competitiveness. This involved a projected reduction of the Peak Vehicle Requirement (PVR) of 80 buses, and related volumes of drivers, and opportunities for service development. The strategy was to be supported by the adoption of core branded services, increased marketing and investment in new vehicles as required. A number of risks to this strategy were identified, the most significant one of which being ‘the unknown degree of competitive response’.

17. The first stage of this strategy, delivered in July 2006, was the relaunch of the Sunderland network which was accompanied by an initial £1 flat fare. Further

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\(^2\) Arriva told us that it disagreed with this comment.
network reviews with accompanying fare and marketing initiatives, were implemented in September and October of the same year.

18. Throughout 2006, network changes were implemented. It was noted in October 2006 that ‘competition continues to be volatile with new registrations by Arriva, Stagecoach, Redby and Stanley Coaches… Network restructuring and resource reduction continue, albeit at a slower pace due to the need to defend market share in key markets’. The impact of competition (and other issues) on the pace of restructuring was noted again in February 2007.

The key events

19. Paragraphs 20 to 60 describe our understanding of some of the significant service developments, fare competition and corporate transactions that took place in the North-East since 2006. Our analysis of these events then follows in paragraphs 61 to 152.

Competition between ANE and GNE: services and fares

20. In 2005, a Small Operator, Kimberley Coaches launched two new services between Hexham and Newcastle and Prudhoe and Newcastle in competition with ANE’s services 602, 604 and 605. [OpCo Manager 3, ANE] told us that ANE responded by launching a new direct service, the X64 in October 2005. Internal documents show that another reason for launching service X64 was the commitment made by ANE to Northumberland County Council to serve new housing developments in Prudhoe.

21. GNE also ran services on parts of that corridor, and by February 2006, competition from both ANE and Kimberley Coaches was estimated by GNE to be abstracting £200,000 from its revenues. Kimberley Coaches withdrew from the route in May 2006 following a fire at its depot but competition from ANE continued and in July
2006, GNE extended its Newcastle–Ryton service into Prudhoe. This was followed by a series of service registrations (in some cases followed by service withdrawals a few weeks later) by both parties across several routes throughout the North-East.

22. Of particular note were: the registration of a service from [X] to [Location A] (service [X]) by ANE, which was cancelled (ie notice was given of its deregistration) two days before becoming operational on 17 September 2006; and GNE’s launch of low-cost services under the Bargain Bus brand (X42/X43) between Newcastle and Blyth on 25 September 2006. During 2007, a number of the services that had been registered in autumn 2006 were withdrawn.

23. A second wave of intensive competition was triggered in November 2008 by GNE’s restructuring of its Bargain Bus services, including the extension of the brand to two further routes in Northumberland. ANE launched a number of services in competition with GNE on the Coast Road (linking Newcastle to Wallsend and Whitley Bay) and GNE launched a further Bargain Bus service between Newcastle and Ashington (north of Blyth).


Negotiations between GNE and ANE

25. The negotiations between GNE and ANE, including meetings, telephone conversations and emails are set out in detail in Annex 3. We summarize below the key phases of negotiation.
26. According to [OpCo Manager 1, GNE’s] DD note 4, on 5 February 2007, [Senior Manager 1] and [OpCo Manager 3, ANE] of Arriva and [OpCo Manager 1, GNE] met to discuss a parallel acquisition and disposal of businesses in the North-East.³

27. Negotiations were pursued in the following months. Meanwhile [OpCo Manager 3, ANE] was replaced by [OpCo Manager 4, ANE]. By September 2007, negotiations had reached the following stage:

(a) GNE was interested in acquiring the operations of ANE’s [●] depot, which accounted for 39 PVR. GNE would require a short-term lease of the depot, pending the rationalization of its portfolio of facilities. It agreed to consider a temporary shared use of the depot as long as there was a clear and definitive separation of facilities.

(b) GNE had identified ‘non-core’ operations, accounting for 44 PVR, [●], which it was willing to consider an offer for. GNE’s leased premises in Ashington would be part of the package.

28. Following the appointment of [OpCo Manager 2, ANE] in [●], negotiations stalled. They resumed in [●], with confidentiality agreements signed on [●] and the formal legal process for the sale and purchase transactions initiated. The parallel transactions envisaged at that stage were as follows:

(a) GNE would acquire three services ([●], [●] and [●] in North Tyneside) and associated 17 buses and 39 drivers and the lease of a staff mess room and toilet at Whitley Bay. Arriva staff would be allowed the continued use of the Whitley Bay premises under a reciprocal arrangement for use of similar facilities at Peterlee by GNE staff.

³ [Senior Manager 1, Arriva UK Bus] told us that he did not recall having a meeting with [OpCo Manager 1, GNE] on 5 February 2007 and Arriva stated that there was no record that such a discussion had taken place. However, Arriva acknowledged that negotiations were held around this time.
(b) Arriva would acquire the 17 services, associated 27 buses, and all the drivers based at GNE’s Ashington depot and the lease of the Ashington depot. GNE would be allowed to operate up to 17 buses from Arriva’s [•••] depot from the date of the sale.

29. Although detailed negotiations progressed in the following months and sales agreements were drawn up, they stalled again in [•••]. In [•••] Arriva produced a new list of more than [•••] services, requiring [•••] PVRs that it was interested in acquiring. In a submission made to us on 7 October 2011, Arriva stated that ‘It should have been, and probably was, obvious to [OpCo Manager 1, GNE] that these were in addition to the Ashington business, not a substitute’. All the chosen services⁴ were located at the [•••] of GNE’s network in areas where Arriva had depots [•••]. However, [OpCo Manager 1, GNE] understood that Arriva no longer wished to acquire use of GNE’s Ashington Depot.⁵ [OpCo Manager 2, ANE] commented that the only services operated from Ashington that were of interest were the Bargain Bus services and service 308 and added that ‘the site is not a deal breaker and has limited value to us… our strategy is different – the moment has passed’. This change of approach was received with apparent bewilderment by GNE’s directors and one of them asked whether these were ‘just stalling tactics to keep us from aggressive competition’. The negotiations stalled again.

30. A third round of negotiations was initiated in late [•••]. The principles of the new deal that was being pursued were set out in a briefing note dated [•••] from [OpCo Manager 1, GNE] to [Senior Manager 2, Go-Ahead]:

(a) A net contribution of at least £0.5 million each for both of the businesses.

⁴ [•••]
⁵ [OpCo Manager 1, GNE] also noted that the previous year the Arriva legal team had ruled out a sale of [•••] services.
(b) The sale by GNE of its Ashington operations in exchange for a business of a similar value from its [X]-based operations.

(c) GNE identified a list of five services accounting for a total of 20 to 22 PVRs that it was interested in.6

31. An internal email shows that in July 2009 GNE interpreted that an agreement in principle had been reached for GNE to acquire [X] services [X], but around 25 August 2009, these services were replaced with a set of services operated from ANE’s Hexham depot. Draft Sale and Purchase Agreements were circulated in early September 2009. Following negotiations in respect of those Sale and Purchase Agreements and employee, pensions, property and vehicle due diligence contracts were exchanged on 19 October 2009. Following further discussions, in particular in relation to the inclusion of buses in the deal, contracts were exchanged on 19 October 2009. The linked Transactions are described in the OFT’s decisions7 and consisted of the following elements:

(a) ANE purchased 17 commercial and tendered services, supported by 25 buses, staff, some residual stock and a six-month rent-free licence for the use of the Ashington depot; and

(b) GNE purchased 19 commercial and tendered services, supported by 20 buses, staff, some residual stock and a six-month rent-free licence for the use of the Hexham depot. We note that services [X], identified by GNE as being of interest, were not included in the final deal.

32. In its decisions of 11 February 2010, the OFT concluded that in the case of Hexham, the merger would lead to a realistic prospect of a substantial lessening of actual (ie head-to-head) competition on three flows (Newcastle–Crawcrook, Newcastle–

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6 [X]
Blaydon, and Blaydon–Crawcrook) affecting total revenues estimated at £1.7 million. However, it did not find a substantial lessening of potential competition. The OFT chose to exercise its discretion on the basis of the de minimis exemption not to refer the merger to the CC. In its decision document, it provided three reasons for this choice: because of the small size of the market; because there was no overlap with regard to depots; and because other operators, most significantly Stagecoach, would remain active post-merger in the area with the possibility of expansion if the commercial opportunities arose.

33. In relation to Ashington, the OFT concluded that there would be a substantial lessening of competition in relation to five flows. It also found a realistic prospect of a substantial lessening of perceived potential competition in the area north of Cramlington. It estimated these markets affected by the substantial lessening of competition to be worth £4.1 million. Again, the OFT chose to exercise its discretion on the basis of the de minimis exemption not to refer the merger to the CC. In paragraph 102 of its decision it said that this was because: the markets concerned were of insufficient importance to warrant a reference; the majority of concerns arising related to the loss of potential, rather than actual, competition; and that Stagecoach and GNE would remain active in the area after the transaction as well as other local operators.

34. The transactions were completed on 28 March 2010.

**Competition with other operators**

35. Throughout the period, the competitive activities of other operators were monitored by GNE. Direct, active competition on commercial services was mentioned in relation to a small number of operators:
36. Kimberley Coaches was active in the market for a short period of about six months between October 2005 and April/May 2006, during which time it competed directly with both Arriva and GNE on the Prudhoe–Newcastle corridor. Competition from Kimberley Coaches was not mentioned in GNE’s reports thereafter.

37. Stagecoach’s activities were monitored throughout the period we examined and Stagecoach competed directly with GNE, particularly in Sunderland, South Shields and on the corridor between Gateshead and Metrocentre. Stagecoach service changes in Sunderland resulted in revenue abstraction from GNE, and GNE’s review would pursue opportunities to recover some of this. When relaunching its Sunderland network on 30 July 2006, GNE offered an initial £1 flat fare offer. Stagecoach implemented further changes to its services in September and October of that year with direct impact on GNE’s Sunderland services and offered free return journeys on new vehicles it allocated to Sunderland and South Shields. A new service 12, competing directly with GNE’s service 33 was launched in December 2006 with a 50p flat introductory fare during December. Stagecoach made further changes to its Sunderland services in May 2007. We saw further evidence of fare competition in Sunderland between Stagecoach and GNE in 2008. There is also evidence of competition on quality of service. In November 2007, Stagecoach introduced low-floor buses on routes in South Shields and Sunderland, which had an adverse competitive effect on GNE’s operations. Both companies converted their South Shields–Sunderland route to low-floor buses in Spring 2008. In November 2008, Stagecoach added late evening journeys to compete with GNE services on the Metrocentre route and more were added in November 2009.

38. In June 2007, Redby significantly expanded its competitive operations in Sunderland, with a significant impact on both Stagecoach and GNE’s operations. Peak journeys to their commercial services were added in September 2007.
39. In July 2007, GNE noted that Stanley Taxis had further refined its services and thereby increased abstraction from GNE’s operations.

Other negotiations, transactions and corporate activities

Contemplated and completed acquisitions

40. On 7 April 2006, Arriva acquired Go-Ahead’s Bishop Auckland operations. The evidence we have seen suggests that the business had suffered from poor ongoing performance. There were structural, and health and safety, issues associated with the building that would require significant capital expenditure and ongoing maintenance expenditure to overcome. This had led GNE to consider two options: the relocation of operations to its Chester-le-Street depot and the possibility of reducing its presence in the area and of operating the network from an outstation. Internal documents suggest that GNE identified a potential buyer for the site and consequently decided to withdraw from the area and to sell its bus operations to Arriva. The transaction only involved the services, staff and buses. The OFT did not investigate the transaction as it considered that neither the UK turnover test nor the share of supply test in section 23 of the 2002 Act was met.

41. The buses of Jayline, an operator providing mainly secured services in the Peterlee area, were acquired by GNE on 1 June 2007 following an approach from Durham County Council. It was anticipated by GNE that service rationalization, higher quality and marketing would enable GNE to increase its market share in the area in competition with Arriva.

42. GNE first considered the acquisition of Northumbria Coaches in May 2006. The conclusions of its financial analysis was that the purchase was not worth pursuing from a financial point of view but that it might become so if the business was strategically important. It was commented that this view was ‘notwithstanding the
point discussed on leverage with Arriva’. The view that the business was not worth anything was reiterated by the Finance Director in December 2006. The view expressed by [OpCo Manager 1, GNE] to its Finance Director was that ‘it is a high debt business with virtually no assets, very little profit and a notional value. We could only justify paying anything substantial playing the “strategic purchase” card’. Work on this possible acquisition, however, continued and after several iterations, it was agreed to purchase the business for two strategic reasons: it could be operated as a ‘low cost’ unit for contracted services and it had spare capacity for 20 vehicles that could be used in North Tyneside. The transaction was completed on 19 September 2007.8

43. In July 2007, the board of GNE considered the purchase of Stanley Taxis’ buses operations. The stated rationale for the purchase was that there was ‘potential for a significant improvement in commercial performance through rationalisation of an overlap with those of Stanley Buses’. The acquisition was completed on 15 October 2007 and cleared by the OFT.

44. In October 2007, GNE considered an acquisition of Redby’s bus operations. It was only prepared to acquire its contracts. As part of the deal Redby committed to curtail its commercial service to a much shorter off-peak operation requiring two buses and volunteered a three-year exclusion from local service operation. The transaction was completed on 27 January 2008.

45. Together the acquisitions of the buses of Jayline, and of Northumbria, Stanley and Redby resulted in a PVR increase for GNE of 37 buses.

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8 The OFT found that neither the UK turnover test nor the share of supply test in section 23 of the 2002 Act was met so did not investigate. Source: www.oft.gov.uk/OFTwork/mergers/decisions/2007/GoNorthEast.
46. In March 2007 the Board of GNE considered the case for acquiring Stagecoach’s Darlington operation. The company was, however, not aware that Arriva had already reached an agreement to purchase that business by early February 2007.

47. In February 2008, GNE indicated an interest in purchasing Stagecoach’s operations (property and services) based in South Shields. Stagecoach declined the offer in March 2008, stating:

We remain interested in further consolidating our position in relation to the operation of local services within the South Tyneside area. We believe that the changes made by Go-Ahead Group in the area during 2007 have changed the position in relation to the original prospects for acquiring routes operated by the Go-Ahead Group. We would however be interested in reconsidering the position once the new service patterns have become properly established.

Partnerships

Arriva/GNE partnership discussions

48. Referring to a discussion on Friday 24 October 2008, [OpCo Manager 1, GNE] asked [OpCo Manager 2, ANE] whether it was the considered Arriva position that Arriva would be willing to consider an arrangement under which ANE operated an equitable proportion of a Nexus-endorsed integrated network in North Tyneside designed by GNE and managed as distinct brand/s as a ‘sub-contractor’ provided that this was commercially attractive, resource savings were proportionate and you received an appropriate share of the revenue benefits.

In his reply, [OpCo Manager 2, ANE] stated that he was keen to consider any alternative business model. On 30 October, [OpCo Manager 1, GNE] sent ‘initial
estimates of the cost/revenue benefits of a “Quality Bus Network” for North Tyneside/South Northumberland’. The discussion paper stated ‘Nexus has floated the concept of working with bus operators in “Quality Partnerships” to design and deliver integrated bus networks’ and that ‘North Tyneside Council has recently raised its wish to pursue a partnership approach in its area and this desire has been endorsed by Nexus’. The paper also stated that

New powers for Nexus provide a safe and legal approach to rationalisation of overlapping networks for the benefit of passengers and operators. This approach could potentially provide a faster and more effective means of delivering an ‘integrated’ network that would be endorsed by Nexus, whilst delivering many of the commercial benefits. Network delivery could be achieved by a variety of structures but ‘single operator responsibility’ by area or market seems essential. This could be delivered on the basis of two separate areas/networks, each with a single ‘dominant’ operator, if this was appropriate.

The document prepared by [OpCo Manager 1, GNE] suggested that ‘this approach might offer an alternative to a sale/purchase agreement’. The covering email from [OpCo Manager 1, GNE] refers to it being ‘offered as an alternative to the purchase/sale option rather than as a substitute’. Arriva told us that the reference to ‘new powers for Nexus provide a safe and legal approach’ indicated that any such arrangement would be made in conjunction with local authorities and in full compliance with the law.

49. On 3 November 2008, according to [OpCo Manager 1, GNE] Nexus held a meeting with local bus operators, including GNE and ANE about ‘Quality Network’ schemes. Nexus said that it did not have a record of such a meeting. However, it noted that on 3 November it had met with [OpCo Manager 1, GNE] in the context of its regular monthly liaison meeting. The agenda of the meeting does not identify the topic of the
possibility of a partnership between ANE and GNE in North Tyneside for discussion. Nexus, however, told us that discussions regarding a possible partnership in North Tyneside had taken place in May and June of 2008. Notes of meetings show that GNE took part in these discussions and the evidence shows that [X] from Arriva had intended to attend the following meeting in August 2008, but it is not clear whether this meeting actually took place.

50. On 10 November [OpCo Manager 2, ANE] and [OpCo Manager 1, GNE] further discussed the possibility of a partnership scheme. An email sent by [OpCo Manager 1, GNE] subsequent to the meeting states

I have agreed with [OpCo Manager 2, ANE] today that if - 1. GNE did not make any further competitive registrations against ANE and, if 2. [OpCo Manager 1, GNE] agreed to take a proposition on ANE 'sub contracting' some North Tyneside operations from GNE within a network designed by us, Then, 3. ANE agrees not to respond with any competitive registrations against us and 4. will seek their board approval to the sub-contracting scheme. I will not hold my breath!

[OpCo Manager 1, GNE] said in our hearing that the agreement was an in principle proposal for Arriva to go with a subcontracting operation to GNE, if GNE would stop doing commercial things in the market that were impacting on it. He said this proposition was rejected. This discussion was followed on 11 November by an email from [OpCo Manager 1, GNE] to [OpCo Manager 2, ANE] stating:

for the avoidance of doubt, if you are drafting a letter for Friday along the lines we discussed, it would obviously be necessary for us to have the reassurance that 'Arriva' meant the Group and all operations owned/controlled/influenced by it. It would for obvious reasons, not be acceptable to have an agreement that did not deal with possible actions
from an Arriva owned Classic business or even a partially Arriva owned
controlled operation, if you get my drift.

51. Arriva told us that no such agreement on restricting competitive service registrations
was reached at the meeting on 10 November, although it was possible that [OpCo
Manager 2, ANE] agreed to take away the partnership proposal and consider
producing a letter of intent from Arriva, in order for Arriva and GNE to take the matter
further with local authorities and Nexus. No such letter of intent was actually
produced by Arriva. Arriva strongly denied that there had been any agreement on
restricting competitive service registrations as suggested by [OpCo Manager 1,
GNE]. It also said that it made no sense for Arriva to agree not to respond to any
competitive registrations by GNE if it decided to enter into the Quality Network
Partnership simply because there would have been little or no scope for future
competition. This is an example of a significant difference in understanding or
recollection between managers. Whether or not an agreement was reached that
came to nothing, or there was never even that degree of consensus is not a matter
that we have been able to resolve. In any event we have seen nothing to make us
conclude that if there was an agreement to restrict competitive impact it was given
effect. However, it is in our view of some significance that discussions between
managers of ANE and GNE were carried on.

52. On 2 December 2008, ANE and GNE agreed to develop outline plans separately for
two networks (for North Tyneside and South East Northumberland), to meet on
22 December to ‘exchange views on the shape and resource level of an optimised
network for each’, and depending on the outcome of such discussions, jointly to
appoint independent consultants to review patronage and revenue for an optimized
network and firm up details of the commercial benefits available from this exercise. It
was envisaged that, if following this, ANE and GNE ‘were satisfied that optimised
networks could deliver benefits for both local authorities and their businesses’, they would make a joint presentation to Nexus and Northumberland County Council.

53. We enquired as to Nexus’s involvement in those discussions. Nexus provided us with a note of a meeting of the North Tyneside Local Transport Plan Implementation Group dated 8 December 2008. This was attended by representatives from ANE, GNE, North Tyneside Council and Nexus. There is a brief reference to the proposed quality partnership with the representative of North Tyneside Council noting: ‘nothing further to report, looking to further meetings with operators’.

54. On 5 December 2008, VOSA published details of three new Arriva registrations in the Coast Road—within the area covered by the proposed partnership agreement and in competition with GNE services. On 12 December, [OpCo Manager 1, GNE] emailed [OpCo Manager 2, ANE] stating that he interpreted the registrations as a sign that Arriva did not want to proceed with the proposed partnership agreement, although he offered to meet later in the month if Arriva were interested in taking the proposed partnership agreement forward. [OpCo Manager 1, GNE] told us that he had a further telephone conversation with [OpCo Manager 2, ANE] on 22 December and a further meeting on the 9 January during which it had become apparent that Arriva was not willing to progress this initiative.

GNE/Stagecoach/Nexus

55. The negotiations surrounding this partnership were discussed in the Tyneside case study (paragraphs 16 to 19). Although Stagecoach and GNE tried to take a coordinated approach to negotiations with Nexus (as indicated by the meeting that took place in June 2007 between GNE and Stagecoach), Stagecoach fundamentally disagreed with Nexus’s approach to network design and negotiations broke down in March 2010.
56. GNE’s April 2010 board report recorded:

Final arrangements have been made for ‘twin’ Quality Bus partnerships between Nexus/South Tyneside Council and the two principal bus operators – Stagecoach and us - to commence with a new network introduction on 13 June. This unusual arrangement was necessitated by the Stagecoach refusal to participate in any multi-operator partnership and this unfortunately precluded achievement of the identified potential economies.

**Competition in the North-East following the Transactions**

57. Go-Ahead told us that GNE’s turnover on the overlapping corridors involved in the transaction was estimated at £[XXX] and concerned three corridors: Hexham–Prudhoe–Metrocentre–Newcastle; Newcastle–Cramlington–Blyth; and Newcastle–Morpeth–Ashington. According to Go-Ahead these routes played a very small part in GNE’s continuing competition with Arriva. It also stated that there were nine contested corridors which accounted for one-quarter of GNE’s turnover.

58. Following the completion of the Transactions in March 2010, both GNE and ANE restructured their networks. It was confirmed in GNE’s April Board meeting that Arriva planned a comprehensive relaunch of its network north of the river Tyne.

   [Senior Manager 2, Go-Ahead] questioned the impact of this on our business. [OpCo Manager 1, GNE] explained that this development would require us to revisit our own plans for network changes following arrival of the new buses on order, but that no change to the financial improvements planned was anticipated.

   Arriva’s changes were set out in ‘major network review and economies in the Tyne and Wear and Northumberland areas registered for implementation on 30 May’. The changes included a new direct service to Cobalt business park and the withdrawal of
Arriva services from Battle Hill (modified service [×]) and Wallsend (withdrawal of service [×]). Further service reductions were introduced by Arriva on 6 September and 31 October. GNE’s October 2010 board report stated that ‘a network review of services in the south west of County Durham is anticipated, although apparently delayed beyond the original October target date into the New Year and includes economies’. GNE introduced service changes on 13 June 2010 in both the Washington and South Tyneside areas. On 14 November, GNE introduced changes to services in North Tyneside which resulted in a PVR reduction of four.

59. GNE’s October 2010 Commercial Report analysed the performance of all of GNE’s routes. The report noted: ‘the May withdrawal of the 306 from Battle Hill and the 337 from Wallsend appear to have provided modest local windfall benefits for our revenue and our passengers’. The analysis of revenue by route shows that no route was negatively impacted by Arriva’s changes to its network. By contrast, nine routes benefited from Arriva’s changes, as shown in Table 1 below. We note that these effects were maintained in November and December 2010.

<table>
<thead>
<tr>
<th>TABLE 1 Passenger and revenue for selected routes in the period, showing change against previous year</th>
</tr>
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<tbody>
<tr>
<td>Service</td>
</tr>
<tr>
<td>Peterlee depot</td>
</tr>
<tr>
<td>202</td>
</tr>
<tr>
<td>203/148</td>
</tr>
<tr>
<td>207/208/238</td>
</tr>
<tr>
<td>23/23A/23B/23C/229/230</td>
</tr>
<tr>
<td>Gateshead depot</td>
</tr>
<tr>
<td>58/58A</td>
</tr>
<tr>
<td>Percy Main depot</td>
</tr>
<tr>
<td>17/317/318</td>
</tr>
<tr>
<td>309</td>
</tr>
<tr>
<td>40/40C/41/41C/340</td>
</tr>
<tr>
<td>75/76/315/316</td>
</tr>
</tbody>
</table>

Source: GNE Commercial report, October 2010.

Although GNE told us that the change made by Arriva to route 306 was later reversed.
GNE told us that a number of service changes had been made by Arriva since the Transactions which had had an adverse impact on GNE. In particular, it cited as examples services X8 and X9 between Newcastle and Cobalt which were introduced by Arriva in May 2010, a new service between Durham and Sunderland that was introduced by Arriva in January 2011, and various other recent alterations to timetables and routes that had all served to increase competition with GNE. It also told us that the allocation of newer buses by Arriva appeared to prioritize routes on which it competed with GNE over other routes. More generally, GNE suggested that rather than being attributed to the Transactions, the network and route changes made by Arriva might be seen in the context of Arriva’s performance, its last year results showing a loss for the business. It speculated that an operator in such a position might tend to retrench to bus services which it felt were more competitive brands, services or bus routes, leading to potential benefits for its competitors.

Interpretation of the developments

We now discuss our interpretation of the implications for competition of these developments. This draws on the DD notes, other evidence we obtained from GNE and Arriva and our further discussions with Go-Ahead and Arriva centred on the rationale behind the competitive events described in paragraphs 62 to 95 and the motives behind the Transactions described in paragraphs 98 to 139.

The notion of territory

From 2006 onwards, GNE’s perspective as it emerges from the DD notes, is to portray the competitive landscape in the North-East as a generally static competitive environment in which there is an expectation that boundaries and competitive behaviours that have been historically defined should be respected by the large operators in the area:
(a) In DD1, ANE’s registration of service [X] from [X] to [Location A] is perceived by GNE as an unprecedented disruption of the status quo: ‘The service… will duplicate a route that has been served solely by GNE and its predecessors for over half a century. This is an unprecedented action for any of the “big three” groups operating in Tyne and Wear’ [ie Stagecoach, Arriva and Go-Ahead].

(b) DD1 goes on to suggest that the extension by GNE of its Newcastle–Ryton service into Prudhoe was perceived by Arriva as an encroachment into its inter-urban territory:

[X] this registration was stimulated by GNE service change in the Ryton corridor, to the west of Gateshead. The Ryton corridor has been served by both GNE and Arriva [and their respective predecessors] since the start of bus operations in the 1920s. GNE inherited the largely local/urban operations of Northern General/Venture Transport whilst Arriva inherited the largely rural and inter-urban links [to Prudhoe and Hexham] of the former United Company.

63. Commenting on the quote in paragraph 62(a), [OpCo Manager 1, GNE] told us that this was simply a reflection of the unusual circumstances whereby Arriva had registered a service and then within a matter of days withdrawn it. However, we note that at the time of writing, the service had not yet been withdrawn. [OpCo Manager 1, GNE] further explained that the service was also unusual in that Arriva could not have operated it sensibly as it had no infrastructure to support it. However, [OpCo Manager 3, ANE] told us that [X]. We find it difficult to read [OpCo Manager 1, GNE’s] reference to unprecedented action as anything other than concern at encroachment on a GNE route.

64. The notion of territory is adopted elsewhere in the DD notes, with references to, for example: ‘Arriva’s North-East core urban areas’, ‘Arriva’s core territory’ (mentioned
on two occasions), “traditional” GNE corridors’ as opposed to ‘shared’ markets, ‘GNE core routes’, GNE’s ‘core operating area’, ‘Arriva’s territory’, “on our territory” in North Tyneside (principally the Coast Road) and Gateshead’. We note that the Durham–Newcastle corridor, Durham local services and North Tyneside are described as shared markets (DD2, paragraph 9).

65. Go-Ahead told us in its hearing that it did not recognize this concept of ‘territory’ and that it would typically refer to markets that would be defined by the location of a bus operator’s depots and trade union agreements. [OpCo Manager 1, GNE] explained that he may have used the term ‘territory’ by reference to the shape of networks during the 1930s but this was not a reference to any implied constraint on where GNE operated. [Senior Manager 2, Go-Ahead] told us that there were markets in specific geographical areas which someone might term ‘territory’ but Go-Ahead would see it as a market opportunity. [OpCo Manager 1, GNE] further explained that GNE’s patch referred to its natural operating territory where GNE had some infrastructure (depot, drivers) and growth in the market that could be stimulated by investment and the development of services. At another point, [OpCo Manager 1, GNE] told us that the word ‘patch’ referred to ‘the area where our services dominate at the moment’.

66. Go-Ahead further explained that because of legacy issues (such as pensions and other benefits) the cost for a Large Operator of taking an operation outside of what might be regarded as a traditional market (by virtue of the location of the operator’s depot) would be significant. Uncertainty over revenue would make de novo entry a risky venture for Large Operators. Go-Ahead had therefore achieved organic expansion by investing in its existing operations to attract more passengers on to its buses.
67. We found that the term ‘territory’ was used not only in the DD notes and correspondence between senior managers but also in a CEO’s report to the Board. We also found this term being used in a totally different context within the Go-Ahead Group: an analysis by the [of the failure of competition in the bus industry, dating from 23 June 2003:

Often being about seizing or defending **strategically important** territory [emphasis added], or ‘creaming off’ profitable core routes, market entry has tended to be ephemeral (and mostly unprofitable) by missing the opportunity of growing the market through ‘getting the bus right’ and attracting new users. It is little wonder that bus competition is nearly always perceived in a negative sense – ‘bus war’ or ‘predatory competition’ – rather than the positive ‘choice’ message engendered by airline competition. Indeed the lightly regulated structure of the bus industry is threatened by irresponsible competition.

68. Arriva’s documentation does not make similar reference to concepts of territories in the North-East area. Arriva told us that it did not believe that any geographic segregation arrangements exist or existed, nor could they exist in the North-East region, on the basis that the existing footprints of the largest bus operators already ‘overlap’ with each other to a significant degree and, in any event, were ever-changing.

69. However, there was a recognition of the fact that different operators were concentrated in different areas. [OpCo Manager 3, ANE] told us that in some areas, one of the three Large Operators (Stagecoach, GNE, ANE) could be described as dominant, in that it had a large market share relatively to the others or neither of the other two
operators had a presence at all.\textsuperscript{10} By contrast, in other areas all three operators were present. [OpCo Manager 3, ANE] told us:

- Arriva had a large market share in the county of Northumberland, which was characterized by a high concentration of its population in the south-east corner (around Cramlington, Bedlington, Blyth and Ashington. Arriva had a significant network in this south-east corner and a number of inter-urban services across the whole of the county. Arriva had very little presence in Sunderland, mainly services coming in from Durham.

- Arriva had no operation in South Tyneside.

- Gateshead was dominated by GNE, although Arriva had some services operating through Gateshead: from Newcastle into county Durham and from Newcastle, along the south side of the Tyne valley into Northumberland.

- North Tyneside was divided by a dual carriageway: the Coast Road. The area between the Coast Road and the North Bank of the river Tyne, called Wallsend was dominated by GNE. Arriva had historically had a depot north of the Coast Road in Whitley Bay (which had been closed). The area north of the Coast Road and the Coast Road itself would be characterized by competition between Arriva and GNE.

- The bulk of city services in Newcastle were operated by Stagecoach. Arriva operated services going north into Northumberland, which linked the suburbs of Jesmond and Gosforth to the city centre. Stagecoach was also dominant in Stockton and Hartlepool.

- Both Arriva and GNE operated in county Durham. The sale of GNE’s Bishop Auckland depot to Arriva had increased the dominance of Arriva in that particular part of county Durham. Services had been rationalized following the acquisition.

\textsuperscript{10} Arriva noted that [OpCo Manager 3, ANE] appeared to use the term ‘dominant’ and ‘dominance’ in the sense of being the main operator in a particular area. We accept that this is not equivalent to the legal definition of a ‘dominant position’ in the sense of a company having the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.
Further to the south in Teesside, Stagecoach and Arriva had operated in Darlington until the depot was sold to Arriva. Prior to the divestment, Arriva and Stagecoach overlapped north of the river Tees, whilst Arriva was the dominant operator south of the river. There were also some overlaps between Stagecoach and Arriva in and around Middlesbrough.

Arriva told us at our hearing that competition in the North-East was quite intense. It told us that Stagecoach was the largest operator in Newcastle, in Sunderland and in South Shields. Go-Ahead was the main urban operator in Gateshead. However, there was competition between operators on the main corridors where inter-urban services would come into the cities. Arriva also pointed to competition from the train and from the private car.

Retaliation and signalling strategies

The 2006 service registrations and withdrawals

The DD notes describe in some detail GNE’s competitive strategy, including its management’s perception of the competitive intent of ANE’s registrations and its own responses.

DD10 describes how a number of actions taken by Arriva between 2000 and 2006\textsuperscript{11} were perceived by Go-Ahead’s [\textsuperscript{\textasciitilde}], as the ‘growing encroachment of Arriva on GNE core routes’. Having chosen not to react to these actions for several years due to a ‘logical aversion to competition’, [OpCo Manager 1, GNE] decided to respond to Arriva’s registration of the X64 service on the Ryton corridor by extending its own service to Prudhoe. [OpCo Manager 1, GNE] told us that Arriva had purchased the operations of some smaller operators which it had used as a base for expanding its

\textsuperscript{11} In particular the actions identified in Appendix 2, but also the acquisition by Arriva of GNE’s Bishop Auckland depot and other approaches; and ‘a process of freezing fares on overlapping routes to increase market share, particularly on the Coast Road and in Western Gateshead’.
operation. [OpCo Manager 1, GNE] further explained that [X] had perceived Arriva’s operation of acquired independent businesses as stand-alone brands following their acquisition as underhand. Similarly, [X] had felt that the explanation (timekeeping issues) given by Arriva for the changes it had made to the jointly operated service 723 was dishonest. [OpCo Manager 1, GNE] also explained that the reference to ‘logical aversion to competition’ was meant to refer to his predecessor’s more conservative attitude and risk aversion.

73. [OpCo Manager 3, ANE], however, did not consider that there had been a significant increase in ANE’s market share in Tyne and Wear in the period leading up to the appointment of [OpCo Manager 1, GNE]. ANE had had several services serving the Newcastle–Ryton–Prudhoe corridor historically and this corridor was important in revenue terms. As noted in paragraph 14, the registration of service X64 was not conceived by ANE as a competitive move against GNE.

74. [OpCo Manager 3, ANE] told us that following [OpCo Manager 1, GNE’s] appointment, it became quickly apparent that GNE intended to compete more actively with Arriva. [OpCo Manager 3, ANE] felt that as robust a response as possible was required. [OpCo Manager 3, ANE] told us that when faced with entry from a small operator, the strategy could simply be [X]. The situation would be different when faced with entry by another large group. In simple terms, in a situation where a large competitor launched a route on which ANE enjoyed a monopoly, [OpCo Manager 3, ANE’s] view was that Arriva’s strategy would be to launch a service on one of the entrant’s own routes in the hope that this would persuade it to withdraw from the route it had entered in the first place.

75. In order to implement such a strategy in response to GNE’s competitive strike (the extension to [X]), [OpCo Manager 3, ANE] argued for the allocation of more new
buses to the North-East, but due to a decline in profitability over the previous few years he had not been successful. There were two other issues: Arriva did not have a strategic department from which to draw buses for a quick response and there were staff shortages. The ANE team and [Senior Manager 1, Arriva UK Bus] discussed what routes to launch and decided on a service to [Location A], as it was believed by [OpCo Manager 3, ANE] to generate high revenue for GNE and was in the heart of GNE’s network. Because GNE’s own service from [ ] to [Location A] had suffered from reliability problems due to congestion [ ], ANE believed there was an opportunity to operate a service from [ ], which would avoid the river crossing.

76. We asked Arriva about the rationale for launching the [Location A] service. In response to one of our written questionnaires, Arriva stated that the rationale for entering the route was that it saw an opportunity to grow the business and provide a more reliable service than the existing operator (GNE). At our hearing with Arriva, [Senior Manager 3, Arriva] expressed the view that, from his perspective, the launch of this service was a generally emotional response by [OpCo Manager 3, ANE] to several service changes made by GNE over a period of time. [ ] accepted that the [ ] launch seemed to be quite a directly related response to GNE activity, as shown by an email sent by [OpCo Manager 3, ANE] to [Senior Manager 1, Arriva UK Bus] on 17 July 2006.

77. In addition, a contemporaneous email from [OpCo Manager 3, ANE] to [Senior Manager 1, Arriva UK Bus] a few weeks after the service was registered states

Faced with this increased level of competition, to protect our interests we have made changes to the timetable of our service [ ] and deployed one additional peak vehicle on to that route taking the pvr from [ ]. These are all midibuses. We have also registered a new route in [ ] which we will be calling [ ] with a pvr of [ ] midibuses,
where we perceive they (sic) may be some commercial opportunities for us. These changes will come into effect in mid September 2 weeks after the Go North East service starts operating in [\textsection].

78. [OpCo Manager 1, GNE] described this new ANE service as a ‘classic “creaming off” effort and a “strategic attack”’. Fearing a more widespread attack on its 14 high-revenue routes (services with £1 million in annual revenue), it planned a three-pronged strategy: Shield, Sword and Spears. The ‘Shield’ strategy consisted in deferring operating efficiency initiatives and introducing new and refurbished vehicles, service, fare and marketing initiatives and local brand/route management initiatives. The ‘Sword’ strategy was implemented through launching three new services (Bargain Bus service X42/43 to Cramlington and Blyth; Durham service D4 and service 29/30 from Peterlee to Newcastle, Sunderland, Middlesbrough, Hartlepool and Durham) aimed at strengthening GNE’s competitive position. GNE was confident that the services could make a positive financial contribution within 12 weeks of commencement. GNE hoped but was not confident that ‘the efforts made under the Shield and Sword initiatives would be enough to persuade Arriva to reconsider its position on operating in Gateshead’. It therefore sought ‘opportunities to extend competitive action to ANE core urban areas that are currently beyond reach of GNE depots’. This ‘Spears’ strategy included three actions: GNE’s acquisition of Northumbria Motor Services; an attempt at purchasing Stagecoach’s Darlington operation; and seeking potential acquisition targets (both bus and coach operators) on Teesside.

79. ANE’s [Location A] service was deregistered on [\textsection], two days before its start. We enquired about the reasons for the withdrawal. In response to one of our written questionnaires, Arriva first told us that [\textsection]. Since the service was in fact withdrawn before it had started, this was clearly incorrect. We enquired further: [Senior Manager
3. Arriva told us that he had considered that [X] and, in the absence of [Senior Manager 1, Arriva UK Bus] who was on holiday, had asked [OpCo Manager 3, ANE] to change his strategy. This is confirmed by an internal email, which states: ‘I have discussed with [X] and suggested the strategy [X]’.

80. [OpCo Manager 3, ANE] did not remember the exact circumstances surrounding the withdrawal of the route, but he remembered calling [OpCo Manager 1, GNE] out of courtesy to inform him that he had withdrawn it. [OpCo Manager 1, GNE] told us that he had called [OpCo Manager 3, ANE] to discuss the reorganization of stands at the Gateshead interchange and had taken this opportunity to clarify whether the service had been fully withdrawn.

81. The DD notes state that in response to the [Location A] deregistration, GNE submitted an application to withdraw its route extension to [X] on 25 September 2007, having found out that this was the ‘alleged cause of the initial Arriva competitive attack on [Location A]’. GNE further noted that its actions would be ‘carefully documented’ in order to ‘demonstrate “rational” commercial behaviour, as defined by OFT, [X]’. It was also decided to suspend ‘any further work on the “Sword” (entry into nearby Arriva markets) and “Spear” (establishment of operations in other core Arriva territory) elements of our commercial response strategy, but will maintain our market defence “Shield” actions’.

82. It therefore seems to us that [OpCo Manager 1, GNE] misinterpreted the deregistration of the [Location A] service as a conciliatory move. In fact, following [Senior Manager 3, Arriva’s] direction, Arriva was [X].

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12 Arriva told us that GNE had amended the route on 8 September such that it no longer served [X], before completely deregistering the route on 25 September. Go-Ahead said this was incorrect; the submission of the withdrawal of the service from [X] was made on 28 September 2008. It said this amendment, so service 11 ceased operating to [X] to serve [X] instead, was that it reduced competition on that small section of route between [X]. However, the level of competition remained high on the remainder of the route.
83. [OpCo Manager 1, GNE] also considered what to do about the other aspects of his ‘Shield, Sword, Spears’ strategy. As set out in the note DD2 (September 2006), he decided ‘the three new services already launched under the Spears strategy would not be cancelled immediately to avoid stimulating OFT interest’. He also noted that Arriva had made three new registrations in other ‘shared’ markets and that ‘these registrations are claimed to be in response to our recent actions’. In light of these new registrations, he was concerned ‘to ensure that any curtailments to services are equitable’. He therefore proposed to ‘signal’ to Arriva our desire to pursue our commercial strategy without serious adverse impact on its business through careful consideration of a phased adjustment of our services to ‘core’ operations in areas of overlap. [iliki]

In view of the challenges posed by the situation, [OpCo Manager 1, GNE] discussed with a law firm, Dickinson Dees, the possibility of a meeting between GNE and Arriva to ‘facilitate a sharing of views on possible future courses of action’ [iliki].

84. We asked Go-Ahead to explain these developments. [OpCo Manager 1, GNE] told us that his perception was that Arriva was concerned that GNE’s market development strategy would affect its business and had reacted in an almost knee-jerk way by launching the [Location A] service to demonstrate that it was capable of launching competitive incursions, even though this was unlikely to be a sustainable service. GNE had hoped that by withdrawing from markets where it was making a loss, this would signal to Arriva that its strategy was based on simple commercial principles aimed at building the market through investment and service improvements. It hoped that Arriva would do the same. [iliki] [OpCo Manager 1, GNE] explained to us that the [qli] extension had been withdrawn because it had failed commercially. [qli]
85. However, comments made by [OpCo Manager 1, GNE] in later documents suggest that some of the actions taken by GNE in 2006 aimed to intimidate ANE: in DD10, it is stated that:

on my appointment to GNE the need to stem, if not reverse, this trend [Arriva’s encroachments] was identified as a key objective and was reflected in an ultimatum to Arriva in 2006 to curtail their efforts or face similar initiatives from GNE. Our activities and the Arriva responses have continued until this time.

[OpCo Manager 1, GNE] told us that this ultimatum was delivered to Arriva by publishing GNE’s commercial strategy and its aspirations for the business, which made clear that GNE was going to expand.

86. In an email to [OpCo Manager 2, ANE] dated 12 December 2008, [OpCo Manager 1, GNE] similarly stated: ‘as I explained to [OpCo Manager 3, ANE] shortly before his demise we will add 3 PVR for every 1 extra you bring in to compete with us’. [OpCo Manager 1, GNE] told us that this statement was no more than bravado as he attempted to deter ANE from aggressive competition against GNE.

The 2007 service developments

87. DD6 dated 13 October 2007 sets out a number of developments which followed the two companies’ meeting on 5 February 2007 and subsequent departure of [X<], which ‘marked a radical improvement in relations and a more positive attitude towards sustainable competition’:

(a) We withdrew our remaining Durham local operation (X20 extension to Arniston Centre) and Arriva withdrew its X21 enhancement on the Durham – Newcastle corridor. Competition remains for local travel in Durham with GNE inter-urban services attracting local users within the City and between Durham and Newcastle where Arriva
provide an hourly ‘Limited Stop’ service in competition with our 15 minute stopping service. We believe that this competition is sustainable and has market benefits.

(b) We reduced frequency in the Ryton corridor from 8/10 buses per hour interpeak/peak to 4/6 and Arriva subsequently decided to reduce from 6/7 to 4/5. There has been some movement on the elimination of very low fare offers although Arriva still retains a ‘return for the price of a single’ offer in the Ryton corridor, as quid pro quo for our Bargain Bus fares on the Newcastle – Blyth corridor. We are now optimistic that our service in the Ryton corridor will return to delivering satisfactory contributions.

88. [OpCo Manager 1, GNE] told us that there was no relationship whatsoever between the withdrawal of GNE’s X20 service and the withdrawal of Arriva’s X21 service. The X20 had been launched in response to representations from Durham County Council and passengers but fewer passengers than anticipated had used the service and there had been reliability problems, which is why the service had been withdrawn. According to [OpCo Manager 1, GNE], both operators had logically reached conclusions about overcapacity on the Ryton corridor and independently decided that they could improve their profile and performance by reducing their capacity on the corridor. The term ‘quid pro quo’ meant that Arriva was copying a tactic adopted by GNE elsewhere.

89. We have not found any documentary evidence in Arriva’s records that any of the changes it made to its services in early 2007 were a response to GNE’s actions, and [OpCo Manager 4, ANE] told us that there was no relation between ANE’s changes and GNE’s withdrawal of the X20. In Spring 2007, the company considered the impact of GNE’s competition on the profitability of its business. Arriva told us that it
identified that services X64, X21 and the enhanced X1 were performing very poorly and consequently offered to sell them to Go-Ahead during their 1 June 2007 meeting. The offer of sale is confirmed by the minutes of the meeting. Arriva told us that, shortly after this meeting, as [OpCo Manager 1, GNE] had made it clear that he was not interested in those services, it submitted deregistrations for services X21 and X64 and the two services ceased to operate in mid-August 2007. The deregistrations released eight buses which were re-allocated elsewhere in the network. In relation to fare increases, [OpCo Manager 4, ANE] [\textsuperscript{90}]. This was the reason why Arriva had increased fares in a number of areas during the summer of 2007.

90. It appears that whatever the motivation for these service cancellations, the fact that they happened closely following GNE’s own service cuts and that ANE had offered them to GNE meant that GNE would be likely to perceive this as a signal relating to ongoing competition. [OpCo Manager 1, GNE] more generally placed his and Arriva’s competitive actions during this period in the context of a ‘radical improvement in relations’, as reported in DD6. We therefore consider that, regardless of the detail of the discussions that took place, the competitive behaviour of both ANE and GNE was directly affected by the negotiations they were holding at the time.

The 2008 and 2009 service developments

91. In summer 2008, following the breakdown of negotiations, Arriva mooted plans to defend against expected retaliation by GNE in Northumberland\textsuperscript{13} with a ‘robust, high quality and swift response’. A number of services were considered across various

\textsuperscript{13} [OpCo Manager 1, GNE’s] email to [OpCo Manager 2, ANE]: ‘obviously you appreciate that our Ashington plans went into suspension when we started talking and we now need to return to our earlier strategy.’
routes, [X]. These plans were, however, not implemented. The negotiations between the two parties finally resumed in October 2008.  

92. In late 2008, GNE restructured its Bargain Bus services and relaunched two existing services under the same brand (see Annex 2). According to [OpCo Manager 1, GNE], the package ‘was achieved with the same level of resource but provided a more attractive service in the overlapping market with Arriva’. Arriva interpreted GNE’s latest competitive moves as evidence of bad faith and retaliated by strengthening its presence on the Coast Road (see paragraph 94).

93. [OpCo Manager 1, GNE] noted:

      After discussions with Arriva, in which we explained the background to this action, we were advised that Arriva would be ‘upping its game’ on these overlapping corridors, but it was agreed that this should not stimulate a further ‘bus war’. Our changes apparently had a positive effect in bringing Arriva ‘back to the table’ and they once again expressed a desire to reach a settlement.

This analysis appears to have referred to the 27 and 28 November exchange between [OpCo Manager 1, GNE] and [OpCo Manager 2, ANE] (see Annex 3). Although [OpCo Manager 2, ANE] told us at the Arriva hearing that he did not recollect any agreement to avoid a bus war. [OpCo Manager 1, GNE] told us that Arriva had indicated that it would improve the quality of its bus services on overlapping corridors. GNE’s new services had sought to serve the local community in Northumberland better. The fact that Arriva had restarted negotiations was no more than a side benefit. There was no agreement or threat intended in launching the new services and the reference to the term ‘bus wars’ simply expressed a concern for

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14 Arriva decided to reopen negotiations in early August but GNE continued to prepare its retaliatory plans throughout September. On 6 October 2008, [OpCo Manager 1, GNE] made contact with [OpCo Manager 2, ANE].

15 [OpCo Manager 2, ANE’s] email to [Senior Manager 1, Arriva UK Bus]: GNE Website: ‘I may be over reacting but I feel that he has played us and, as feared, has simply been playing for time’.
GNE’s reputation, following the adoption of inappropriate on-the-road tactics during a previous escalation of competition.

94. [XHR] and which concluded with [OpCo Manager 1, GNE] making what appeared to be direct threats of retaliation.16 On 12 December, GNE registered a new express service (the X41) from Ashington to Newcastle. Arriva considered [OpCo Manager 1, GNE’s] latest threat and registration as an act of war and developed its own retaliatory plans. Having considered several options, ANE launched three retaliatory services on 30 January 2009 (see Annex 2). This included the ‘Northumbria Express X30’, an ‘unbadged fighting brand’ operated under a different livery with older low-floor vehicles and dedicated rosters. The drivers of this service were said to have been ‘fed on red raw meat’ and there was a ‘dedicated on street “supervisor”’.

Other actions included the introduction of ‘“spoiler” services from the outskirts of Blyth that run in front of X42/X43’, the scheduling of services to operate 5 minutes in front of GNE’s own services and the scheduling of services in a way designed to block-book stands at certain stations. GNE responded by launching a new service X9 from Newcastle to Middlesbrough.

95. Arriva said the whilst the language used in the documents was unfortunate, it disputed that these actions were instances of exclusionary behaviour as opposed to examples of vigorous competition. It explained that references to spoiler services related to properly registered services running to timetable, albeit registered ahead of competing services. It also said that stand-blocking referred only to fully utilizing slots at a particular stand and not to excluding the rival, as, for example, there was spare capacity within Haymarket bus station and Nexus controlled the allocation of stands, while at Ashington other operators generally preferred to use on-street stops.

16 [OpCo Manager 1, GNE] told us that his comment referred to scheduling issues created by Arriva’s changes to services 307 and 308.
Conclusions

96. We consider that both GNE and ANE’s registrations of new services in 2006 were manifestations of retaliation strategies, albeit that ANE’s initial retaliatory strategy in GNE’s territory was overruled by [Senior Manager 3, Arriva]. GNE’s service registrations in late 2008 may have been intended to compete more effectively for customers. However, the tone of emails from [OpCo Manager 1, GNE] to [OpCo Manager 2, ANE] during the period was threatening and the move was perceived by Arriva as an act of war. The evidence shows that Arriva’s subsequent registrations in late 2008 were part of a retaliation strategy against GNE.

97. The understanding of such signalling strategies by each competitor appears to have been imperfect, particularly in 2006.

The object of the Transactions

Arriva’s explanation

98. We explored this issue with Arriva in a hearing. Arriva told us that its North-East business [Ã€] and that the driver behind the Transactions was [Ã€]. Arriva added in its subsequent submission that the way in which it planned to do this evolved during the course of discussions, and that the ongoing dialogue between GNE and ANE was often unpredictable and disjointed.

99. [Senior Manager 3, Arriva] explained that a [Ã€], [Senior Manager 2, Go-Ahead] had approached Arriva to explore the possibility of selling and acquiring underperforming assets. Such transactions would be expected to result in a reduction in capital employed, the closure of some of the depots and the restructuring of entire businesses. There were too many depots in the North-East [Ã€].
100. [OpCo Manager 2, ANE] told us that throughout the negotiations, Arriva’s interest had always been centred on the Northumbria Coaches business, whilst Go-Ahead had sought to cherry-pick what it wanted on the other side of the deal.

101. [OpCo Manager 2, ANE] explained that in the early stages of the discussions, Arriva’s own depot in Ashington was the subject of a CPO process and the operations needed to be relocated. Arriva had explored a number of alternatives (including the possibility of a super depot) [OpCo Manager 2, ANE]. Arriva said at the hearing that it had taken the leasehold interest in the Ashington site, which was thought to have a break clause after five years, but Arriva subsequently corrected this, confirming the CC’s original understanding of Arriva taking a six-month licence on the Ashington depot. It was therefore not a long-term solution. However, by October 2008 [OpCo Manager 2, ANE] emailed [OpCo Manager 1, GNE] to state that it had changed its property strategy.

102. [OpCo Manager 2, ANE] Arriva said that the reason a short-term lease had been given to GNE under the acquisition was because Arriva had understood that GNE was intending to move the business to another depot it had in the area.

**Go-Ahead’s explanation**

103. [OpCo Manager 1, GNE] told us that his aspiration throughout the negotiations was to acquire services from Arriva. He also accepted that the effect of the transactions would be to enhance Arriva’s existing domination of one area and GNE’s domination of another. [Senior Manager 2, Go-Ahead] told us that the intention behind the linked deal was the belief within Go-Ahead that it could do better than Arriva in Hexham. [Senior Manager 2, Go-Ahead] told us that what he was primarily interested in was the improvement of GNE’s bottom line.
The sale of services and service rationalization

104. It is clear from the documents we have reviewed, including the notes of meetings between GNE and Arriva and email exchanges, that the focus of GNE’s interest was on the services that it would acquire and that [OpCo Manager 1, GNE’s] focus throughout the negotiations was on acquiring services operated by Arriva on the [X]. This was, however, changed to a package of routes operating on the Newcastle–Prudhoe corridor following a discussion that took place on 25 August 2009.

105. [OpCo Manager 1, GNE] recorded in DD4 that during the 5 February 2007 meeting with [Senior Manager 1, Arriva UK Bus] and [OpCo Manager 3, ANE], [Senior Manager 1, Arriva UK Bus] [X]. Arriva said it had no record of a meeting taking place on that date and neither [Senior Manager 1, Arriva UK Bus] or [OpCo Manager 3, ANE] were able to recall this meeting. [X].

106. ANE’s first analysis of deal options we have seen dated 21 June 2007, identified £[X] of benefits in contribution terms. Of these, [X].

107. ANE’s interests changed in the course of the negotiations. Having expressed particular interest for the Bargain Bus services (X42/X43) and service 308 (but not the other services operated from the Ashington depot) consistently since June 2007, it commented that the potential deal had moved over a great number of services over time, as they were trying to reach a deal. Arriva proposed a set of services in October 2008 (see paragraph 29) although GNE noted that Arriva’s legal team would be likely to block it. By June 2009, ANE’s interests for GNE’s Ashington operations as a going concern were limited. Its plan was to withdraw all the commercial services that would be acquired (services X41, X42, X43 and 308) and to operate all the remaining services (all contracts/tenders) as a separate unit to keep costs down.
108. As late as August 2009, the parties were still disagreeing as to which services should be included in the deal (20 August 2009 email from [OpCo Manager 1, GNE] to [OpCo Manager 2, ANE]). [OpCo Manager 1, GNE] commented to [OpCo Manager 2, ANE] that to enable the sale of the Ashington operations to Arriva in 2008, GNE ‘had gone to some lengths to move the relevant work, vehicles and staff you would have acquired into this depot to provide a “clean” purchase opportunity’. The operations that GNE bought from Arriva excluded Hexham-based services 685/X85/85 but included services 604 and X66, which were transferred from another ANE depot.

109. We also noted that the parties gave some consideration to the possibility of re-exchanging buses after the sale, although this option was not implemented. An internal email from [OpCo Manager 1, GNE] states ‘Arriva still want to do something odd with the vehicles involved in the sale/purchase whereby we each buy them back shortly after the deal. We still don’t understand how this would work in practical terms’. ‘I kicked the re-purchase of buses clause into touch but we agreed to consider re-exchange after completion where/if it made sense to do so (that is, vehicles of same type/size and age that would avoid the cost of either of us ‘converting’ to our standard)’. In the end, certain buses were excluded from the Transactions (eight vehicles from each operator were not transferred as they were similar).

Property strategy

110. Although GNE originally expressed an interest in purchasing the depot, there is no evidence that this was part of a general property strategy for the North-East and in fact GNE was prepared from the outset to contemplate a deal that would exclude the property. From GNE’s point of view, the depot was poorly utilized; over half of the PVRs were operated in corridors contested with GNE and following the acquisition,
GNE would be able to rationalize the two networks. In any event, Arriva was not prepared to sell this depot to GNE.

111. Similarly, there is no evidence that the acquisition of the Hexham operations by GNE was envisaged as part of a property strategy by GNE and this was not discussed until July 2009.

112. However, the evidence suggests that this was not a significant driver of the transaction: the Hexham depot was mentioned for the first time in negotiations in summer 2009, and only became part of the deal package on 25 August, after it was decided that the stand-alone services GNE wanted to buy would not constitute a ‘standalone business’. In its hearing. Arriva noted that the one core service from the Hexham depot, the 685, was excluded from the deal and was moved to its Newcastle depot.

113. and Arriva’s first analysis of the benefits of the transaction. However, the situation had changed by the time the deal was concluded: as noted in paragraph 29, in October 2008 [OpCo Manager 2, ANE] indicated that due to a change in its property strategy Arriva was not interested in the depot anymore and accordingly ANE’s November 2009 property strategy did not mention GNE’s Ashington depot. Arriva told us that it had considered the Ashington depot to be in poor condition and would have incurred a liability to material dilapidation costs at the end of its lease, and negotiations with the council on its existing depot and alternative sites meant that there was no urgent need to acquire an alternative depot. In addition, we noted that Arriva started to consolidate its depots in January 2010.

17 [<<]
before the Transactions had been approved by the OFT and that GNE’s commentary on this development does not mention the Ashington depot.\textsuperscript{18}

114. It therefore seems unlikely that depot consolidation and efficiency strategies drove the Transactions. In any event, neither the Hexham depot, nor the Ashington depot was included in the Transactions considered by the OFT, with each party having offered a six-month lease to enable the other to operate the services in the short term (as set out in Schedule 3 of the Business Sale Agreement (BSA)). Arriva has since clarified that the lease of the Ashington depot was in fact a six-month licence to occupy. Arriva and Go-Ahead told the OFT that ‘following the transactions the ANL Hexham depot will be redeveloped for housing and the GNE depot may be converted for maintenance of leased to a new tenant and so both could leave the market’. GNE told us that ANE continued to occupy the GNE Ashington depot on the terms set out in Schedule 3 to the BSA until shortly before the expiry of the six month rent-free licence period, in approximately September 2010, whereafter it surrendered the lease to the landlord of the premises.

115. Post-transaction, GNE sought to purchase the Hexham depot. In January 2011, Arriva told GNE that it had an offer of £\textsuperscript{[x]} for its depot from a property developer. \textsuperscript{19} After further negotiations, GNE purchased the depot for £\textsuperscript{[x]} in May 2011. Its book value on an existing use basis, ie as a bus depot was £\textsuperscript{[x]}.

\textit{Restoring/improving territorial boundaries}

116. This objective is articulated in a number of documents provided by GNE:

\textsuperscript{18} The closure of depots at Alnwick (January), Bishop Auckland (February) and Peterlee appears to be proceeding, although in early January no work appeared to have commenced on the replacement sites at Belmont and Faverdale. It is expected that the existing Durham depot will move to Belmont later in 2010.

\textsuperscript{19} [x]
(a) ‘the deal needed to recognise our objectives of buying their services on “our patch” as well as selling them our services on “their patch”.’ ([OpCo Manager 1, GNE’s] email to [Senior Manager 2, Go-Ahead], 3 March 2009).

(b) ‘It has taken three years to get to a point where we can negotiate Arriva back off our patch.’ ([OpCo Manager 1, GNE’s] email to [ ], 22 July 2009).

(c) ‘The overall objective of the exercise should be to curtail operations on “each other’s territory” to generate operating efficiencies, eliminate fruitless competition and allow us both to grow our markets. There are still areas where Arriva has introduced new services in our territory which they are so far not willing to withdraw/sell and maintain a “we will not sell this service” position, although they have been willing to sell each of these services at different points in the negotiations.’ ([OpCo Manager 1, GNE’s] email to [ ], copying [Senior Manager 2, Go-Ahead] 25 August 2009).

(d) ‘Discussion are being held between Go North-East and Arriva North-East as to an exchange of work in adjacent operating territories.’ (Group Chief Executive Report, 25 August 2009).

117. Go-Ahead told us that the type of competitive behaviour that had been adopted by Arriva, which it described as tit-for-tat, was not positive for the customer, was not conducive to market growth and it was against this background that GNE had considered that if it bought part of its business it could deliver a better outcome for customers.

118. At the time when the above comments were made, GNE had been actively pursuing the acquisition of services operated by Arriva on the [ ] in North Tyneside. This would have enabled it to rationalize the network and decrease the level of supply by three to four PVRs. However, the deal that was actually implemented following the 25 August 2009 meeting enabled the rationalization of services on the Newcastle–
Prudhoe route instead. This change led [OpCo Manager 1, GNE] to comment: ‘back to the drawing board on the [●].’

119. Arriva would have been aware of aspects of GNE’s territorial objectives. During the 1 June 2007 meeting, [OpCo Manager 1, GNE] stated:

some of the services in this region are almost flukes of history. Certain routes operated by one operator may offer a better ‘strategic fit’ with the network of another operator …. Arriva are currently operating services in Jesmond which are not a natural fit with Arriva’s network, and Go-Ahead are therefore offering to pay sums to acquire the routes that would more naturally form part of Go-Ahead’s existing network.

On 2 June 2007, [OpCo Manager 1, GNE] told [OpCo Manager 2, ANE] that: ‘Logically we want to reinforce our presence in areas we already operate, and this might suggest a slightly different list of services’ and it would have been clear to Arriva from [OpCo Manager 1, GNE’s] comments throughout the negotiations that he was interested in purchasing services that competed with GNE. Arriva’s documents also suggested notions of operators concentrating on their own areas:

(a) On 18 September 2007, summarizing the negotiations to date, [OpCo Manager 4 ANE] stated: ‘… Of course geography for best fit for them and us must be part of thought process’. We note that other objectives were listed in this email.

(b) On 16 October 2008, Arriva expressed interest for a set of services operated by GNE in the Durham–Peterlee–Middlesbrough area (see Annex 3). [OpCo Manager 2, ANE] commented that the listed services would “naturally” fit with our operations’. A pictorial representation of the networks of GNE and ANE (see Annex 1) suggests that an acquisition of these services would have removed the south section of GNE’s network that appears to encroach in Arriva’s operating area.

(c) ANE’s Budget 2008 presentation stated under the competition heading: [●].
120. Other evidence also indicates that Arriva understood a link between the proposed sale and ongoing competition with GNE:

(a) In March 2008, [Senior Manager 3, Arriva] sought advice from [X] on the deal that was being proposed. The discussion centred on the services that would be swapped. In relation to the Bargain Bus services (X42/X43), [X] advised: ‘if you don’t do a deal you need to do something to destabilise GNE in the area’. Following receipt of [X] advice, [Senior Manager 3, Arriva] asked his team to proceed with the transaction.

(b) On 10 June 2009, commenting on the [X] of GNE’s Ashington depot and [X], one of ANE’s directors commented: ‘[X]’.

Quality partnership as an alternative to the Transactions

121. As explained in paragraphs 48 to 54, between late October 2008 and early 2009, ANE and GNE explored the possibility of a partnership agreement. This was explicitly envisaged by both parties as an alternative to any sale and purchase of businesses. [Senior Manager 2, Go-Ahead] noted the proposal but stated that ‘my preference remains that we agree an exchange of mileage with Arriva, without Nexus involvement’. [X]

122. For [OpCo Manager 1, GNE], the reason why a quality partnership was an alternative to the Transactions was because it would ‘deliver cost and revenue benefits to both operators through rationalisation’.

123. We asked Arriva why it considered a quality partnership to be a possible alternative to the Transactions, given the stated rationale it had given for the Transactions. [Senior Manager 1, Arriva UK Bus] stated that Arriva was looking to maximize returns to its shareholders and minimize capital employed but was unable to explain how this would be achieved through a quality partnership. [OpCo Manager 2, ANE] clarified
that Nexus was at the time effectively brokering a deal [X] that would remap the resources that were employed in the network more evenly across [X]. [OpCo Manager 2, ANE] therefore hoped that Arriva would be able to improve the efficiency and returns of its business by exploring this type of opportunity in [X].

124. [Senior Manager 1, Arriva UK Bus] commented in reaction to the proposal, ‘cost savings of £[X], plus revenue benefits?! If it’s feasible for both parties we should certainly progress – at the very least in parallel with previous discussion’. This suggests he considered that the proposal for a quality partnership scheme might be an alternative to a sale and divestment deal. Arriva told us that

the effect of the Quality Bus Network Partnership as proposed by [OpCo Manager 1, GNE], if endorsed by the appropriate Local Authorities, would have been to abate competition between the rival companies in the area covered, and subject to Local Authority supervision, regulate the provision of bus services so as to provide the appropriate level and frequency of services between the companies. This would have had the benefits of reducing over-bussing and reducing the capital committed to the services by each company as the competition would have been removed.

125. [OpCo Manager 1, GNE] reported in an email to colleagues (see paragraph 50) that he and [OpCo Manager 2, ANE] had agreed on 10 November that the proposed partnership agreement would include a restriction on new competitive service registrations against each other’s services. On 11 November, [OpCo Manager 1, GNE] communicated to [OpCo Manager 2, ANE] that this restriction was to apply to all subsidiaries of Arriva and associated ventures. [OpCo Manager 1, GNE] told us that this proposal should be interpreted in the context of negotiations which had stalled and of comments made by [OpCo Manager 2, ANE] that he had difficulties
getting buy-in from his management for a deal whilst GNE continued to register new services in competition with ANE. [OpCo Manager 1, GNE] told us that the proposals had been abandoned soon after.

126. Arriva told us that no agreement was ever made to restrict competitive service registrations. Moreover, no agreement on a partnership arrangement was reached with GNE, although it is possible that [OpCo Manager 2, ANE] agreed to take away the proposal and consider producing a letter of intent, which would be required to initiate the partnership. Such a letter was never produced, and the proposed partnership scheme never came to fruition. Arriva pointed to an email exchange between [OpCo Manager 2, ANE] and [OpCo Manager 1, GNE] of 12 December 2008 where [OpCo Manager 2, ANE] made it plain in this email that he would continue to compete and defend his commercial operations, following registration of new services in competition with GNE (see paragraph 54).

Reaching an equitable deal

127. Describing the negotiations that had taken place since 2006, [OpCo Manager 1, GNE] stated in DD10 dated 8 August 2010:

over the last three years Arriva has expressed various levels of interest in purchasing our Ashington based business and we have made it clear that we would only consider that as part of a balanced deal under which they sold to us balancing operations ‘on our territory’ in North Tyneside (principally the [\textcircled{a}]) and [\textcircled{b}].

This concern about reaching an equitable deal was expressed in a number of previous documents. The notion of equity, as stated by [OpCo Manager 1, GNE], appears to be related to reaching a ‘balanced’ exchange of turnover between the companies and a balanced ‘curtailment of services’ in each company’s territory.
[OpCo Manager 1, GNE] told us that he had understood that from Arriva’s point of view the substantial downward change to its turnover would be seen as a failure and therefore Arriva wanted any acquisition to be paid with assets or another part of a business rather than in cash terms. Arriva did not want to be seen to concede defeat and to be less successful than a competitor in the market.

[Senior Manager 3, Arriva] also explained that the deal needed to achieve some equilibrium and that contribution generation needed to be right for both sides.

*Changing operators behaviours for the long term*

In response to the 25 August email quoted in paragraph 116(c) above [Senior Manager 2, Go-Ahead] stated: ‘For me, I’m not too worried about the quantum of what we might pay Arriva, rather than the quality and sustainability of what we are buying. There is a lot at stake here, not just the detail of the specific deal, but the wider future behavioural GNE/A dynamics in the NE. This is particularly relevant with the OFT/CC issue in play. Last chance saloon…’. [Senior Manager 2, Go-Ahead] told us that this email expressed his frustration with negotiations which had taken more than three years, but also his concern that if the transaction failed, there would be rancour and bad feelings between Arriva and Go-Ahead, which he considered to be business partners. He was also concerned about the motivation of his North-East team if the negotiations were to fail.

In DD10 [OpCo Manager 1, GNE] summarizes the outcome as follows: ‘the proposed deal with Arriva delivers sufficient “disengagement” on both traditional GNE and Arriva territory to provide the basis of a robust, long-term deal’. [OpCo Manager 1, GNE] commented that as a result of the Transactions, Arriva withdrew from a major
corridor in Gateshead (except for fast inter-urban links) and that the Transactions had only impacted 10 per cent of the competitive overlaps in the North-East.

133. Go-Ahead described the Transactions as a de minimis deal. Its senior management nevertheless was involved and the negotiations on many occasions faltered. We asked Go-Ahead why it had not abandoned the negotiations earlier. [Senior Manager 2, Go-Ahead] told us that it was because the opportunity to buy another operator’s depot did not present themselves often: there had been only three such opportunities for Go-Ahead in the five-year period [X]. We noted that the Hexham depot was in fact not included in the Transactions, although this was purchased by Go-Ahead in spring 2011 following further negotiations with Arriva.

134. It is unclear what strategic objectives Arriva was seeking, if any, beyond the Transactions. It was suggested early in the negotiations that an agreement between the parties could pave the way for further agreements, but we have not been able to establish whether the parties made any commitment beyond the Transactions. As noted in Table 1 some changes made by Arriva to its North Tyneside network after the Transactions appear to have resulted in reduced head-to-head competition between the parties (including as a result of modification to its [X] services [X] (later reversed) and [X], both of which it had planned to sell to GNE up until 25 August 2009) and to have directly benefited GNE. However, GNE has pointed to other changes which increased competition against it.

Packaging the deal for the OFT

135. [X]

20 [OpCo Manager 1, GNE] also enquired whether the wider consideration of [X] would be considered. [OpCo Manager 4, ANE] replied that when a relationship had been developed through this transaction, this would be dealt with at a later date perhaps a few months down the line'.
136. [X] told us that a simple route swap would not be permitted (as shown by the 2004 Leeds case) [X]. [X], however, noted that it could be difficult to determine what constituted a business.

137. There is extensive evidence throughout the documents that both parties were actively seeking to structure the agreement in such a way that it would be considered under the merger regime: [X].

138. We note that the parties’ submissions to the OFT appear to have misstated the nature of the transactions in two respects: (a) Arriva and Go-Ahead told the OFT that they started negotiating in March 2009, and (b) Arriva stated that the rationale for the transaction was:

As the market has developed, Arriva plc has operated more inter urban services, [X]. When the opportunity to dispose of Hexham arose, this made commercial sense to ANL. During the negotiations, it became apparent to both parties that GNE’s Ashington operation would potentially fit very well with ANL’s Blyth operations and offer and opportunity to reduce the amount of buses in Blyth/Ashington whilst maintaining a better quality of service to the passengers. As such it was suggested and agreed that the Ashington operations could form part of the consideration for the disposal of ANL’s Hexham operations.

139. Arriva told us that this was an error in the description of the reason for the Transaction but Arriva did not believe that it would have had any material impact on the OFT’s assessment of the two transactions.
Conclusions

140. The evidence suggests that neither GNE’s nor ANE’s property strategies were key factors in the decision to proceed with the Transactions, but we recognize that the sale of Hexham-based operations and ultimate sale of the depot to GNE provided significant financial upsides to ANE.

141. The strategies seem to centre on the mutual sales of service. While these may give some operational and efficiency advantages, we believe that a significant purpose of the Transactions from GNE’s point of view was to improve the profitability of its operation by removing some overlaps with Arriva’s services and decreasing competition in its core areas of operation. ANE furthermore saw in the deal an opportunity to remove the competition from Bargain Bus services, which was severely damaging the profitability of its business.

142. We accept that proposals for a quality partnership were rapidly rejected by both Arriva and Go-Ahead, but it was considered by both parties as a possible alternative to the transaction. The purpose of such a scheme would have been to rationalize networks and in addition, [OpCo Manager 1, GNE] expressly hoped to restrict competition more generally as part of such a deal. Since this was perceived by both ANE and GNE as an alternative to the Transactions, this suggests that one of the aims of the Transactions was to restrict competition and rationalize networks.

143. In our view, the concern of both parties to reach a deal that would be equitable is not typical of normal corporate transactions and indicates that the purpose of the deal went beyond normal commercial objectives.
The nature of contacts between parties

Frequency of contact and sharing of information

144. We have counted that between 2007 and 2009, Go-Ahead and Arriva had in excess of 70 contacts (by phone, email or in person).

145. Arriva told us that confidential information was only passed on to GNE when a potential deal was a more than likely prospect in summer 2008 and in 2009. It told us that route-specific cost and revenue information was not shared until towards the end of the negotiations. We found that in fact as early as 20 June 2007 (before the parties had signed confidentiality agreements, following meetings at the offices of external legal advisers), some confidential financial information was sent by Arriva to Go-Ahead. This included [X] for [X] services. Arriva told us that [X]. Nonetheless we consider that it still represents a very surprising degree of disclosure of data from which meaning could be drawn.

146. Based on the following evidence, the two parties appeared prepared to share their respective plans for service rationalization following the transactions, to discuss what they considered to be a sustainable level of supply on some routes and wider strategic considerations, such as their property strategies. [OpCo Manager 1, GNE] on 19 August 2009 noted that following the transaction, Arriva intended to withdraw the resource required for all commercial services and estimated the benefits of the deal in contribution terms for both parties following the rationalization of services.

147. At several points in the discussions, GNE discussed with Arriva its planned competitive moves. According to DD2, on 9 February 2007, [OpCo Manager 1, GNE] offered: ‘as previously indicated, the offer

\[\text{[X]}\] \[\text{[X]}\]
I’m making is that from whatever date you agree to come to the party we will do nothing that in any way causes you grief and we will seek to implement changes to our mutual benefit’ and ‘There are some practical and effective actions that we can take almost immediately to demonstrate good faith if that is what you want.’ On 12 December 2008, he warned Arriva that it was planning some new competitive registrations and on 27 February 2009, [OpCo Manager 1, GNE] informed Arriva that ‘I have placed a moratorium on any further network development impacting on Arriva (despite your recent registrations) pending the outcome of any discussions’.

148. []

The involvement of senior management

149. There is good evidence that the events that unfolded in the North-East between 2006 and 2010 were known to senior management. Go-Ahead’s [], appears to have initiated GNE’s strategy in 2006 and [Senior Manager 2, Go-Ahead] was kept informed of developments through the DD notes. The evidence we have seen shows that [Senior Manager 2, Go-Ahead] talked about the negotiations with [Senior Manager 3, Arriva], his counterpart at Arriva, on several occasions in 2007, 2008 and 2009.

150. Within Arriva, [Senior Manager 1, Arriva UK Bus] was directly involved in some of the negotiations, was kept informed of all developments by the MDs of ANE and forwarded emails relating to the negotiations and competition with GNE to [Senior Manager 3, Arriva]. [Senior Manager 3, Arriva’s] approval for various actions (including competitive actions) was sought on several occasions during the negotiations and [Senior Manager 3, Arriva] also sought advice on the deal from a business partner, []. We also received evidence that in January 2008, [Senior
Manager 3, Arriva] intervention was sought by Go-Ahead through the intervention of [⋯]

151. Both [Senior Manager 2, Go-Ahead] and [Senior Manager 3, Arriva] denied having had an active role in the developments in the North-East and the transactions, although [Senior Manager 3, Arriva] told us that he and [Senior Manager 2, Go-Ahead] had agreed ‘to keep an eye on what was going on’ and acknowledged that there had been contacts between them to explore the possibility of selling and acquiring underperforming assets. [Senior Manager 2, Go-Ahead] told us that he occasionally talked to [Senior Manager 3, Arriva] and that he was kept ‘in the loop’, but told us that he was not across the detail of the negotiations or Transactions.

152. Arriva told us that [Senior Manager 3, Arriva] was not involved in the day-to-day discussions about the transaction nor was he aware of the detail of those discussions. However, [Senior Manager 3, Arriva’s] experience and concern about the financial performance of ANE explains his level of interest.
Maps of the Large Operators' operations in the North-East
FIGURE 1

Arriva network in the North-East

Source: CC analysis of Traveline data for October 2009 and Ordnance Survey Meridian 2 road mapping.
FIGURE 2

Go-Ahead network in the North-East

Source: CC analysis of Traveline data for October 2009 and Ordnance Survey Meridian 2 road mapping.
FIGURE 3
Stagecoach network in the North-East

Source: CC analysis of Traveline data for October 2009 and Ordnance Survey Meridian 2 road mapping.
## ANNEX 2

### Chronology of key competitive actions taken by ANE and GNE

<table>
<thead>
<tr>
<th>Date/period</th>
<th>Arriva</th>
<th>Go-Ahead</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 2000</td>
<td>Michael Franks Coaches, having started bus operations in competition with both Arriva and GNE, offers its bus business for sale to GNE. GNE declines to buy it and the business is offered to Arriva, who buys it. Arriva revised its services and having operated the former Franks service for a period, deregisters it.</td>
<td></td>
</tr>
<tr>
<td>30 July 2005</td>
<td>Arriva service 1X/X1 is withdrawn and replaced by an increase in the frequency of its X1 (Middlesbrough–Durham–Newcastle) service from hourly to half-hourly in competition with GNE and introduces new Sunday service.</td>
<td></td>
</tr>
<tr>
<td>23 Oct 2005</td>
<td>Arriva registers a new ‘limited stop’ 30-minute X64 service on the Newcastle–Ryton–Prudhoe corridor and revises its existing service 602 on this corridor. This increased the frequency of its services on the corridor to 6 buses per hour.</td>
<td></td>
</tr>
<tr>
<td>3 Sep 2006</td>
<td>Arriva registers former GNE service 684 and diverts it via Metrocentre on to Ryton corridor. Frequency is also increased.</td>
<td>GNE revises services to Ryton on 7 July, including the registration of a new service 11 and a revision of its existing service 10. This change does not increase the level of resources, but improves links to other services and extends its services to [ ].</td>
</tr>
<tr>
<td>17 Sep 2006</td>
<td>On 21 July, Arriva registers new service 153/154 in competition with GNE’s service [ ] between [ ] and [Location A]. Frequency of the X64 is also increased, requiring one additional PVR.</td>
<td></td>
</tr>
<tr>
<td>8 Oct 2006</td>
<td>Service D4: Arnison Centre–Durham City Centre is also registered in August.</td>
<td></td>
</tr>
<tr>
<td>15 Oct 2006</td>
<td>On 18 August, Arriva introduces off-peak services 392 and 393 between Blyth and Newsham, in competition with GNE X42, X43.</td>
<td></td>
</tr>
<tr>
<td>29 Oct 2006</td>
<td>Improvements to North Tyneside–Coast Road services (service 309) registered, involving a PVR increase of 3.</td>
<td></td>
</tr>
<tr>
<td>12 Nov 2006</td>
<td>On 15 September 2006, Arriva deregisters service [ ] (but it continues to operate for 9 weeks, in line with statutory requirements).</td>
<td></td>
</tr>
<tr>
<td>12 Nov 2006</td>
<td>On 15 September 2006, Arriva registers a new service X21 between Durham and Newcastle, which, combined with its X1 service provides a 15-minute frequency on this corridor. This competes with GNE’s service 21.</td>
<td></td>
</tr>
<tr>
<td>18 Nov 2006</td>
<td>On 29 September, GNE submits that withdrawal of its route extension to [ ], which had been the alleged trigger for the [ ] registration.</td>
<td></td>
</tr>
<tr>
<td>24 Nov 2006</td>
<td>29 September, registers the extension of a second tier service (337) to Wallsend in North Tyneside, in competition with GNE’s service 336.</td>
<td></td>
</tr>
</tbody>
</table>
23 Dec 2006
Cancels D4 service: Arniston Centre–Durham City Centre.

Nov 2006

1 Jan 2007
Fare promotions on the Blyth–Cramlington corridor started 13 January and fare promotion continuing on the Ryton corridor (X1 to X4).

14 Jan 2007
Significant reduction in the Viva Tees Valley network

25 Mar 2007
GNE implements an East Gateshead network change. Also carries out a review of its North Tyneside services which results in increased frequency on the ‘Coast Road’ (service 307) and filling gaps in peak times on services 301 and 302. Also launches the Cobalt Clipper to the Cobalt business park, with support of Kickstart funding.

5 Apr 2007
Departure from Arriva announced. Appointment of [ ].

May 2007
MD’s report identifies that competition with Arriva has resulted in a PVR increase of 15: West Gateshead (4); Bargain Bus (5), Service 21 (3) and North Tyneside–Coast Road (3).

27 May 2007
Major network changes in south-east Northumberland believed by GNE to be ‘defensive’ measures, as GNE was known to be progressing the purchase of Northumbria Coaches.

29 Jul 2007
On 1 June, GNE registers a reduction in services in Western Gateshead (services 10(11)), which results in the reduction of competition with Arriva on the Ryton corridor. GNE reduces the frequency of its services on the Ryton corridor from 8/10 buses to 4/6 buses.

29 Jul 2007
Changes to the 21 group of services are being introduced on 29 July to improve reliability and reduce customer confusion.

? GNE withdraws remaining Durham local operation (X20 extension to Aniston).

12 Aug 2007
Arriva withdraws X21 enhancement on the Durham–Newcastle corridor. Parallel service X1 is also downgraded from low-floor to conventional step entrance vehicles.

? Arriva reduces service frequency on the Ryton corridor from 6/7 to 4/5 and changes some of its fares, but retains ‘the very low fare initiative, apparently as a response to our Bargain Bus operation’.

? Arriva improves services and marketing in competition with Bargain Bus and strengthens its operation in the Ashington area, ‘apparently in anticipation of market entry by GNE’.

Sep 2007
GNE completes its acquisition of Northumbria Coaches, thus gaining an operational base in Ashington.

Oct 2007
[ ] appointed [ ].

Nov 2007
Arriva moves existing low-floor double deck vehicles from service 308 to the Blyth–Cramlington–Newcastle corridor, on journeys timed ahead of GNE’s X42/X43 Bargain Bus service.

29 Jun 2008
Introduces £2.50 day return fare on the Blyth to Whitley Bay corridor. £3 return promotion introduced by GNE.

Aug 2008
‘Nexus secured work for 6 PVR has been won within “traditional” GNE operating territory.’

14 Sep 2008
Introduces a £12 weekly ticket and relaunched the ‘Return for the price of a single’ offer on the Ryton corridor in response to GNE’s service upgrade. Launch of a major service upgrade on the Newcastle–Metrocentre–Ryton corridor.
Nov 2008  The ‘2 for 1’ offer in the Ryton corridor ends. Arriva introduces new weekly tickets from Morpeth and Cramlington to Newcastle at £17 and £14 respectively. GNE restructures its services to Morpeth, Pegswood and Rothbury to make them more attractive than the competing Arriva services (with a service frequency of 15 minutes between Newcastle and Seaton Burn). An improved Bargain Bus network with a half hourly Morpeth–Newcastle service and improved links to Thropton and Ashington are introduced from Sunday 23 November. Branding extended to two further routes (X44/X45?) in Northumberland. All Bargain Bus services upgraded to low-floor operation and the brand is relaunched with a new taxi feeder system provided by commercial partner Phoenix Taxis.

1 Feb 2009  On 5 December 2008, Arriva launches services 307 and amends service 308 (the latter having previously been operated in coordination with GNE), resulting in more competition on the Coast Road. GNE commented that Arriva retimed service 308 to ‘block us out’ of this service. On 12 December 2008, GNE registers a new express service (X41) from Ashington to Newcastle, via North Seaton and The Spine Road. Two additional buses are also deployed on service 308 following Arriva’s retiming of their journeys.

8 Feb 2009

March 2009  Arriva receives new vehicles, which are allocated to services competing with GNE.

29 Mar 2009  On 30 January Arriva registered new service 726 (Langley Park–Chester-le-Street) and 754 (Langley Park–Durham) replacing parts of GNE’s reduced services 14 and 25A.

30 Mar 2009  On 30 January, registers two services to compete with Bargain Bus: service 43A (Newcastle–Cramlington–East Hartford) and service X30 (a duplicate of GNE X31, scheduled to operate 5 minutes in front of it).

5 Apr 2009  In early February 2009, GNE registers an hourly service (X9) from Newcastle to Middlesbrough.

1 Jun 2009  Promotion on Bargain Bus routes: bring a friend for free, when you buy a return ticket.

Feb 2010  On 4 December 2009 registers an hourly evening and Sunday service between Bishop Auckland and Durham on service 5, competing directly with GNE’s service 21.

30 May 2010  On 1 April 2010, Arriva registered a network review resulting in service rationalization in the Tyne and Wear and Northumberland areas. This resulted in new direct services from Cobalt to Newcastle, and the withdrawal of Arriva services from Battle Hill and Wallsend (North Tyneside). As part of the ‘No Change to Service’ campaign in North Tyneside in response to Arriva’s network changes, GNE promotes the new £3 Cheap Day Return tickets and the weekly £11 Route Saver tickets available on the Centurion, Cobalt Clipper, CityLink and Coaster services from 23 May 2010.

June 2010  Network review and economies in Tyne and Wear and Northumberland continue with changes from 6 September and more on 31 October. [P<]

Autumn 2010  Source: Information provided by parties.
Contacts made between Arriva and Go-Ahead between 2007 and 2009

<table>
<thead>
<tr>
<th>Contact dates</th>
<th>Participants</th>
<th>Synopsis</th>
<th>Source</th>
</tr>
</thead>
</table>

Source: Information provided by parties.
Geographic market segregation—
evidence from the North-West and other areas

Introduction

1. In this paper we set out the events surrounding competition between FirstGroup and Arriva in Chester and the Wirral between 2007 and 2009. As part of our analysis of events in Chester and the Wirral we became aware of a proposed transaction in the Chester area. There is also evidence of proposed transactions in other areas of the two operators’ businesses, in particular [X] (although we note that none of these transactions ultimately took place). Therefore, we also present an analysis of the interaction between FirstGroup and Arriva in [X]. We also present some analysis of interactions between the two operators in Leicester.

2. We analyse the decision-making process in these areas and the nature of strategic interaction, drawing in particular on a large body of internal documents. We identified from these documents a number of relevant senior individuals at both companies involved in these events. They are:
   (a) [Senior Manager 1, FirstGroup UK Bus];
   (b) [Senior Manager 2, FirstGroup UK Bus];
   (c) [Senior Manager 3, FirstGroup UK Bus];
   (d) [OpCo Manager, First Potteries]; and
   (e) [Senior Manager, Arriva].

3. Our interpretation of these events draws on a large number of FirstGroup documents, including monthly and quarterly board papers (for both the local operating company and UK Bus), internal emails and notes of correspondence with Arriva. Similarly, we draw on a large number of Arriva documents, including monthly operations reports, internal emails, and notes of correspondence with FirstGroup. We also held a
hearing with [Senior Manager 1, FirstGroup UK Bus] who was present during the
time of these events and with Arriva.

Chester and the Wirral

Strategic background

4. We summarized some of the key facts relating to the sale of Chester City Transport
   (CCT), actions by Arriva and the sale of CCT to FirstGroup in Appendix 6.6 to the
   provisional findings dated 6 May 2011.

5. In June 2006, Chester City Council (CCC) decided to put CCT up for sale and
   announced its intention to do so in August 2006. CCC invited potential bidders to
   sign a confidentiality agreement, which imposed a covenant on the would-be bidder
   that for a period of 12 months from the date of signature, the proposed bidder would
   not register any new service in direct competition with CCT.

6. Arriva told CCC that it wanted to take part in the sale process, but not on the terms of
   the confidentiality agreement, and later explained that it wanted CCT to deal with
   Arriva exclusively, and outside the sale process. Arriva also announced that it would
   register on CCT’s routes and, assuming that CCC was prepared to engage with
   Arriva on its terms, there would be a seamless transfer of the services from CCT to
   Arriva in January 2007. Following this exchange, CCC revised the duration of the
   covenant to the shorter of six months or the sale process and did not request that
   Arriva refrain from registering services in Chester during this period, provided that it
   could prove it was not doing so by using any confidential information that had been
   provided to it by CCT. Arriva declined to sign the agreement and on 10 September
   2006 it registered services that fully matched (in terms of routes and timings) all
   CCT’s services at the time. The Arriva services were due to start operating on
   7 January 2007.
On 11 September 2006, Arriva wrote to CCC to state its desire to provide Chester’s local network. This letter stated that:

Arriva is currently the principal bus provider throughout Cheshire, Wrexham, Flintshire and the Wirral, and operates the majority of inter-urban links to and from Chester, as well as many local routes between the City and Deeside. In fact, in a radius of 15 miles from Chester its four garages operate over 250 buses in the area. It is therefore crucial to Arriva that the sale of CCT does not result in any part of its present network becoming vulnerable to, or even weakened by, the outcome of that process. In fact, Arriva sees the sale of CCT as a unique opportunity to strengthen the bus network in Chester by providing a fully inclusive local and regional pattern of services which give a freedom of movement that hitherto has not existed, because Arriva would be in a unique position to offer co-ordinated frequencies, common and attractive ticketing and an extensive range of journey opportunities.

In November 2006, Arriva cancelled its 10 September 2006 registrations, except for those on three routes (1, 1A and 15A) on the Blacon corridor, in respect of which a new timetable was to be introduced, commencing on 22 January 2007. Overall, the effect was to double the total number of services on these routes. These routes competed head-to-head with CCT routes 1, 1A, 15, 15A and 2 on the Blacon corridor, and Arriva began to operate these services in June 2007.

FirstGroup was also considering purchasing CCT. FirstGroup’s business case for the acquisition noted that [●]. This document considered the risks and sensitivities of acquiring CCT. [●] The document also considered the risk of FirstGroup not acquiring CCT and of Arriva expanding further through the acquisition of CCT, noting that this [●].
10. On 19 June 2007, FirstGroup and CCC announced that they had mutually agreed exclusive terms for the sale of CCT and that the sale was subject to the agreement of the Secretary of State for Transport. In August 2007, the purchase of CCT by FirstGroup was announced and FirstGroup took over the CCT network including those services that competed head-to-head with Arriva's new registrations.

**Events since June 2007**

**Service registrations and other competitive actions**

11. Annex 1, Table 1, shows the chronology of FirstGroup's and Arriva's service registrations/deregistrations, frequency changes and timetable changes in Chester and the Wirral between August 2007 and September 2009. We have concentrated on services on which the two operators overlap with one another. We have included some relevant quotes from both parties' internal documents that relate to these changes. Other internal documents are discussed in the rest of this section.

12. In July 2007, FirstGroup registered a new service in the Wirral, the [X], which competed with Arriva's service [X]. It began operating this service on 20 August 2007. Several FirstGroup board papers, emails and other internal documents refer to its registration of service [X] in the Wirral. Taken as a whole, these references suggest that FirstGroup viewed this registration as retaliation against Arriva for competition on the Blacon corridor in Chester:

(a) 'With the onset of competition with Arriva in Chester, we have registered a competitive service in the Wirral [X].'

(b) 'We've introduced a new lower fares arrangement on the CCT services to counteract the Arriva presence [ie three routes operated with new vehicles] and have registered against them on the Wirral.'

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(c) [Senior Manager 1, FirstGroup UK Bus] contemporaneous written account of [a] conversation with [Senior Manager, Arriva] at a [[C] meeting of [C]]: ‘He asked whether I knew we had registered 13 PVR against them on the Wirral. I said yes I did and said he [C] given that he was [C]. He asked where that was – I said Leicester and Chester.’ In response to this email, [OpCo Manager, First Potteries] noted ‘The Wirral registrations were a result of the Chester situation’.

(d) ‘[C] I would like to compare with the damage we are doing to them on the Wirral.’

(e) ‘As another retaliatory measure [for Arriva’s registrations in Chester], First Potteries have started to compete on existing Arriva routes in the Wirral—but these routes are currently losing circa (£3k) per week.’ [C] The paper identifies [Senior Manager 2, FirstGroup UK Bus] and [OpCo Manager, First Potteries] as its authors, although we are advised by FirstGroup that [OpCo Manager, First Potteries] was not in fact involved in its preparation other than to provide [Senior Manager 2, FirstGroup UK Bus] with information that was fed into it.

13. A paper produced by FirstGroup’s local operating company in the Potteries titled ‘BRIEFING PAPER SERVICE [C]’ provides more detail on the rationale of this registration in the Wirral. This document appears to have been prepared after the service was registered but before it commenced operating, providing information to FirstGroup’s UK Bus Board on whether it should decide to proceed to operate the service that had already been registered. [C] The paper recommends that the board continue with the proposed registration for four reasons, one of which is the message it would send to Arriva about FirstGroup’s ability to protect its market.3

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2 [Senior Manager, Arriva] does not recall this conversation. See paragraph 29 below.

3 [C]
14. As indicated by the emails from [Senior Manager 1, FirstGroup UK Bus] and the board paper for which they were the sponsor, set out in paragraph 12 above, [Senior Manager 1, FirstGroup UK Bus] was aware of the registration of service and the reasons for it. [Senior Manager 1, FirstGroup UK Bus] told us that [Senior Manager 1, FirstGroup UK Bus] was aware of the need to do things in the Wirral, but that [Senior Manager 1, FirstGroup UK Bus] would not have characterized it as 'in response to Arriva' but rather as in response to problems in the Wirral which would have been there regardless of what Arriva was doing elsewhere, including a poor-quality depot in Birkenhead, rising fare tolls in the Mersey Tunnel and route design issues. [Senior Manager 1, FirstGroup UK Bus] told us that they had to make those routes more profitable and [Senior Manager 1, FirstGroup UK Bus] did not see it as retaliation. Other problems with the Wirral operations are not, however, mentioned as a rationale for the registration of service in the extensive set of documents we have received—the only documented rationale for the service is a response to competition with Arriva in Chester (as illustrated in the quotes in paragraph 12 above, including in the paper for FirstGroup's UK Bus board. While the documents refer to the Mersey Tunnel charges, these are noted in relation to the withdrawal of the service rather than its registration. On the basis of the evidence referred to above, we consider that the most likely rationale for the launch of the service is that which is set out in FirstGroup's internal documents.

15. It appears to us that Arriva did not apparently initially understand that this registration by FirstGroup was in response to Arriva's competing services on the Blacon corridor (see Annex 2, Table 2, where [Senior Manager, Arriva] is reported to have asked [Senior Manager 1, FirstGroup UK Bus] about these registrations in a conversation of [ ]). As noted below (see paragraph 29), [Senior Manager, Arriva] does not recall this conversation.

4 [ ]
16. Subsequently on 13 July 2007 Arriva registered extensions to its services in the Wirral, by registering two new services—the 441 and the 470—both to start in September 2007 in direct competition with FirstGroup’s services [X] and [X]. Discussion of these registrations appeared in an internal email dated 10 July 2007 from [X] to [Senior Manager, Arriva] which mentions them as possible responses to the FirstGroup registrations.

17. In addition, Arriva considered the idea of retaliating outside of the Wirral in response to the FirstGroup registrations—in particular the email mentioned in the preceding paragraph also suggests introducing new services in the Wigan area in direct competition with vulnerable FirstGroup services. However, the proposal appears not to have been taken forward at the time (although two of the proposed new services were introduced some time later in October 2008).

18. In September 2007, head-to-head competition between the operators in Chester intensified as a result of several service and frequency changes: (a) Arriva began running a further service, service 9, which overlapped with FirstGroup’s service 9; (b) FirstGroup registered a new service 3/3A which competed with Arriva’s services 1/1A and 15A (in part) in Blacon to remove the complication of hospital diversions away from the main city centre; and (c) FirstGroup also increased its frequencies on services 1/1A, and 15/15A which overlapped with Arriva’s services 1/1A and 15A on the Blacon corridor. We note that these are examples of head-to-head competition in Chester rather than of retaliatory responses in different areas such as those that took place in the Wirral. Annex 1, Table 1, provides a chronology of FirstGroup’s and Arriva’s price changes in Chester, of which we are aware.

19. In October 2007, Arriva made a number of deregistrations. On 29 October 2007, Arriva deregistered its Chester service 9 (and ceased running it on 24 December
following the 56 days’ notice period). On 26 October 2007, Arriva also deregistered its services 441 and 470 on the Wirral (which ceased operating on 23 December 2007, following the 56 days’ notice period). These services had competed with two FirstGroup services in Birkenhead (services [×] and [×]).

20. Arriva submitted that the deregistrations were effected as a result of [×] view expressed at a meeting. In particular, Arriva submitted that [Senior Manager, Arriva] Outlook calendar demonstrated that an important meeting took place on 12 October 2007 attended by [×]. According to [×], during that meeting [×] expressed his view of how to compete effectively with limited resources that ‘you don’t just thrash out at competition, you defend what you have’. [Senior Manager, Arriva] recalls that [×] told Arriva North West to withdraw from those services that had been registered in [×] in the Wirral and service [×] in Chester.

21. We note that we have not received any contemporaneous documentation to verify Arriva’s account of this important meeting. Moreover, we also note excerpts from Arriva’s local operating company board papers which indicate that Arriva was looking for FirstGroup to withdraw from the Wirral in response to Arriva’s own withdrawal. [×] In addition, we note the contemporaneous record prepared by [Senior Manager 1, FirstGroup UK Bus] (see paragraph 35 below) which states that [Senior Manager, Arriva] telephoned [×] to discuss deregistrations in the Wirral.

22. FirstGroup withdrew service [×] on the Wirral in August 2008. This was noted as a potential signal to Arriva to withdraw from the Blacon corridor in Chester in one board paper (see (a) below) and an internal email notes that there had been no ‘positive response’ from Arriva to the deregistration (see (b) below):

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5 Arriva told us in its hearing that the deregistrations were made on 22 December, and told us to refer to the VOSA N and P record for confirmation. We looked at VOSA N and P records which show that deregistration was made on 26 October, but that the service ceased operating in December following the 56 days’ notice period.

6 [×]
(a) ‘Competitive service [X] in The Wirral is to be deregistered from [X]. It is hoped that this withdrawal will encourage our competitor in Chester to withdraw from Blacon.’

(b) ‘[X], we have also deregistered the [X] on the Wirral and have seen no positive response.’

23. Arriva did not act upon this signal, as it continued to operate services in Blacon.

Evidence of communications between Arriva and FirstGroup

24. We have seen documents which indicate that between July 2007 and January 2008, the period when we consider that attempts were being made by both parties to engage in signalling strategies, senior managers at FirstGroup’s and Arriva’s UK Bus divisions had some conversations about their competing services in Chester, the Wirral and Leicester.

25. [Senior Manager 1, FirstGroup UK Bus] recorded three conversations with [Senior Manager, Arriva] by way of email to comply with FirstGroup’s competition compliance programme. [Senior Manager 1, FirstGroup UK Bus] records stated that these conversations took place on [X], [X] and [X]. [Senior Manager 1, FirstGroup UK Bus] recorded a detailed account of the content of these conversations, and [the] records referred to discussions around registrations in the Wirral, among other things—the full record from [the] competition compliance submissions are set out in Annex 2, Table 2. In the following paragraphs, we discuss these conversations and the registrations to which they refer, including what we have been told about the conversations and the registrations by Arriva and in particular by [Senior Manager, Arriva].
26. [Senior Manager 1, FirstGroup UK Bus] competition compliance record from [X] refers to a conversation with [Senior Manager, Arriva] on [X], following a [X] meeting. According to [Senior Manager 1, FirstGroup UK Bus] records, [Senior Manager, Arriva] asked [X] about FirstGroup’s Wirral registration (which we understand to be the [X] service), and [Senior Manager 1, FirstGroup UK Bus] responded that [X] given that he was [X]. When asked where this was, [Senior Manager 1, FirstGroup UK Bus] stated Leicester and Chester (having made registrations in Chester and reduced fares in Leicester) and added [X]. [Senior Manager 1, FirstGroup UK Bus] record also notes that [Senior Manager, Arriva] stated that ‘[Arriva] had a perception that [FirstGroup was] attacking them because they wouldn’t strike back so he said it wasn’t surprising that we [Senior Manager 1, FirstGroup UK Bus] and [Senior Manager, Arriva] both thought the same thing of one another’. According to the record, he also said that [Arriva] would have to retaliate for the Wirral registration. At two points in the conversation [Senior Manager 1, FirstGroup UK Bus] told [Senior Manager, Arriva] that [Senior Manager 1, FirstGroup UK Bus] could not discuss this [X] and ended the conversation.7

27. [X] competition compliance record of [X] noted that he was also approached by [Senior Manager, Arriva] on [X] following the [X] meeting and that [Senior Manager, Arriva] attempted to start a conversation about Chester. [X] noted that he told [Senior Manager, Arriva] he could not have that conversation, when [Senior Manager, Arriva] began to talk about specifics.

28. We asked [Senior Manager, Arriva] about these conversations at the hearing with Arriva. Following the hearing, Arriva also provided further material and responses to questions we had raised at the hearing.

7 We note that [Senior Manager 1, FirstGroup UK Bus] told us that [they] gave strict instructions to [X] staff not to engage in discussions of this nature with Arriva. We also note that [Senior Manager 1, FirstGroup UK Bus] sent [the] compliance report to a number of colleagues and specifically advised [X], both operating company managers, to seek advice if they needed it in case the local Arriva teams tried to have a similar discussion.
29. [Senior Manager, Arriva] maintained that he could not recollect having had a conversation with [Senior Manager 1, FirstGroup UK Bus] on [●] about FirstGroup’s Wirral registration. Arriva also stated that since [●] [Senior Manager, Arriva] had attended approximately 25 [●] meetings and that it was completely normal for attendees to talk to each other outside plenary sessions. It is not surprising therefore that [Senior Manager, Arriva] could not remember specific conversations which may have taken place. [Senior Manager, Arriva] did not record the majority of casual conversations, where he did not consider them to be significant.

30. In addition, [Senior Manager, Arriva] no longer maintained (as he had done at the hearing) that he could not have known on [●] about FirstGroup’s registration of services [●] in the Wirral. In the 7 October submission, Arriva referred to an operations report of [●] which noted FirstGroup’s application to register services [●] and noted that Arriva was carefully considering its position and would respond appropriately. We note that the CC had this report in its possession before the Arriva hearing and brought it to the attention of Arriva afterwards. Arriva stated that knowledge of FirstGroup’s Wirral registration was obtained by local intelligence. [Senior Manager, Arriva] later recalled an email of [●] from [●], then Managing Director of ANW, which sets out Arriva’s planned response to FirstGroup’s Wirral registration (see paragraph 16 above).

31. According to Arriva, this email formed the basis of an application received by VOSA on 13 July 2007. It is Arriva’s submission that by the time the discussion with [Senior Manager 1, FirstGroup UK Bus], which [Senior Manager 1, FirstGroup UK Bus] had subsequently recorded in writing, had taken place [●], [Senior Manager, Arriva] had ‘firmly decided upon the action that Arriva would take’, and that ‘at the time, [Senior Manager, Arriva] felt it was important for Arriva to affirm its reputation for being a forceful competitor and not to cede market share to First Group’.
32. Arriva also argued that it was inconceivable that it would have been able to influence FirstGroup’s actions in the Wirral and that in no way would FirstGroup or any other major operator wish to be perceived as being dictated to.8

33. Following the Arriva hearing, the CC reviewed the evidence once again and was able to verify that the FirstGroup service in point commenced operation on [X], and was therefore registered 56 days prior to this. Overall, the evidence shows that Arriva was aware of FirstGroup’s registration of service [X] prior to the conversation of [X] recorded by [Senior Manager 1, FirstGroup UK Bus].9

34. In relation to the entry in [X] competition compliance record that [Senior Manager, Arriva] attempted to discuss Chester with him at the same [X] meeting but that [X] told [Senior Manager, Arriva] that he could not have that conversation when [Senior Manager, Arriva] tried to engage in specifics, [Senior Manager, Arriva] noted that he could not recall the specific conversation although he had seen [X] many times at the [X].10

35. [Senior Manager 1, FirstGroup UK Bus] competition compliance record of [X] stated that [Senior Manager, Arriva] had telephoned [X] that day and referred to Arriva’s deregistrations in the Wirral, which we understand to be services [X]. [Senior Manager 1, FirstGroup UK Bus] record states that ‘he [Senior Manager, Arriva] said that they had deregistered some services in the Wirral and asked whether I had done anything’. The record also states that [Senior Manager 1, FirstGroup UK Bus] replied that [Senior Manager 1, FirstGroup UK Bus] was not aware of these deregistrations.

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8 Further, [Senior Manager, Arriva] noted that if a conversation had taken place near the vicinity of the lifts (which is where [Senior Manager 1, FirstGroup UK Bus] compliance record states it took place), that was a very public place and any conversations could not possibly have been confidential, or conspiratorial or otherwise of any great consequence.

9 In relation to the alleged conversation between [Senior Manager 1, FirstGroup UK Bus] and [Senior Manager, Arriva] on [X], [Senior Manager, Arriva] stated that he could not recall such a conversation having taken place. He also stated that he could not have discussed FirstGroup’s Wirral registration because it had not taken place at the time but occurred on 20 August. It was therefore impossible for him to have had such a conversation with [Senior Manager 1, FirstGroup UK Bus]. In his oral evidence, [Senior Manager, Arriva] repeatedly insisted that he knew nothing about FirstGroup’s Wirral registration on [X].

10 Again, [Senior Manager, Arriva] noted that if the conversation took place on the way to the lift, there was clearly nothing private or of any substance in his comments.
According to [Senior Manager 1, FirstGroup UK Bus] records [Senior Manager 1, FirstGroup UK Bus] also told [Senior Manager, Arriva] that [Senior Manager 1, FirstGroup UK Bus] could not discuss these matters but that [Senior Manager, Arriva] said that they could because they were only discussing events that had already occurred. The note also refers to a backlog at N and P (the publication of VOSA registrations).

36. We asked [Senior Manager, Arriva] in the Arriva hearing about this conversation. He told us that he had also made a contemporaneous record of the [X] conversation with [Senior Manager 1, FirstGroup UK Bus] in his competition compliance submission and that he had telephoned [Senior Manager 1, FirstGroup UK Bus] to confirm rumours about FirstGroup’s deregistrations due to difficulties in obtaining accurate information from VOSA.11 [Senior Manager, Arriva] also told us that he could not have had discussions about Arriva’s Wirral deregistrations that [Senior Manager 1, FirstGroup UK Bus] records refer to, since these deregistrations did not in fact occur until 22 December 2007.

37. However, contrary to [Senior Manager, Arriva] oral account public records of Arriva’s deregistrations show that they occurred in October 2007 (the services were scheduled to cease operation in December 2007 following the 56 days’ notice period) as set out in paragraph 19 above.12

38. [Senior Manager 1, FirstGroup UK Bus] competition compliance record from [X] noted that [Senior Manager, Arriva] approached [X] after a [X]. According to [Senior Manager 1, FirstGroup UK Bus] record, [Senior Manager, Arriva] referred to substantial Arriva deregistrations on the Wirral to put them back to the same level of service as Arriva operated prior to FirstGroup’s entry, and asked whether FirstGroup had

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11 Arriva reiterated this point in the 7 October submission.
12 This is confirmed in the Arriva 7 October submission.
reviewed this and had taken any action’. [Senior Manager 1, FirstGroup UK Bus] replied that [✉] did not consider the changes material and so FirstGroup had not taken any action. [Senior Manager, Arriva] then responded that he was surprised that FirstGroup did not see the changes as material, and referred to [✉] as the date by which he would expect to revise his registrations if he felt it necessary. [Senior Manager 1, FirstGroup UK Bus] recorded that [Senior Manager 1, FirstGroup UK Bus] told him ‘he could do what he liked but [FirstGroup] didn’t expect to change [its] service patterns for the time being’.

39. We asked [Senior Manager, Arriva] about this conversation at the Arriva hearing. He told us that he had no recollection of the conversation of [✉] having occurred. [Senior Manager, Arriva] also said that generally he would not have discussions with [Senior Manager 1, FirstGroup UK Bus] about service registrations and deregistrations.

40. Given the number of discussions recorded in [Senior Manager 1, FirstGroup UK Bus] compliance log, at Arriva’s hearing we asked about Arriva’s competition compliance programme. [Senior Manager, Arriva] told us that it involved making submissions when staff felt it was necessary, and that submissions were often only half a sentence or a one line comment. Arriva described the format of its competition compliance form.

2007 transactions discussions

41. We now discuss events surrounding a proposed transaction between FirstGroup and Arriva involving vehicles in Chester and the Wirral (as noted above, this transaction did not take place). Discussions about this proposed transaction began at the end of September 2007, and the detailed meetings and correspondence are documented in Annex 2. [✉], the transaction could provide a signal that FirstGroup did not want to
get into a ‘tit for tat battle’. In September 2007 [Senior Manager 1, FirstGroup UK Bus] made a verbal offer to purchase Arriva’s vehicles in Chester. In an email to [X], [Senior Manager 1, FirstGroup UK Bus] stated that [Senior Manager, Arriva] accepted in principle and offered to acquire the vehicles operated by FirstGroup in the Wirral. This proposed transaction was [X] in two letters, one relating to Chester and one relating to the Wirral. Both of these letters referred to the purchase/sale only of buses (and there is no suggestion that the proposed deal might include any assets other than buses).

42. [X] and it was requested that a paper be prepared for the Bus Board. This paper was discussed on [X]. Again this board paper only refers to the sale/purchase of vehicles (no reference to the sale of other assets or the transfer of staff). The paper noted [X] and that there was a possibility of purchasing the 13 vehicles that Arriva used to compete on these routes. The paper then noted that ‘the objective in purchasing these vehicles is to alleviate competition on the acquired Chester routes, thereby improving financial performance to levels commensurate with the original business case’. Consistent with this objective, at several points the paper assumed that this vehicle purchase would also lead to Arriva ceasing to compete on these routes.

43. FirstGroup’s UK Bus Board paper then noted that a key risk in relation to the proposed transaction was that ‘Arriva do not honour the implied “spirit” of the transaction and simply re-register the routes with different vehicles—however this is considered unlikely’. The paper concluded by recommending that the Bus Board approve the acquisition.

44. We consider that the FirstGroup UK Bus Board paper clearly shows that it was FirstGroup’s expectation (albeit not a certainty) that the purchase of Arriva’s vehicles
would also involve a deregistration of Arriva’s Chester services and therefore a removal of the competition on FirstGroup’s overlapping services—indeed it is on this basis that the transaction is recommended to the UK Bus Board for approval.

45. [Senior Manager 1, FirstGroup UK Bus] told us that the assumption that Arriva would deregister these routes was based on the assumption that Arriva was losing money, because FirstGroup was also losing money on those services. [Senior Manager 1, FirstGroup UK Bus] told us that it was noted as a risk that Arriva would not deregister because there were no discussions around registrations, only about the sale of buses, but that the calculations FirstGroup did were on the basis of ‘they will not reregister’, but that was a risk FirstGroup was taking. [Senior Manager 1, FirstGroup UK Bus] told us that there was no ‘implied spirit’ of the transaction as the transaction was simply to purchase some buses but that there was a hope in FirstGroup that Arriva would not reregister on those services. [Senior Manager 1, FirstGroup UK Bus] also stated that there must have been some notion of an implied spirit to the transaction by the author of the paper, but that [Senior Manager 1, FirstGroup UK Bus] was very clear to the author that the only thing FirstGroup were doing was selling/buying buses.

46. In this instance, [Senior Manager 1, FirstGroup UK Bus] explanations regarding the meaning of the term ‘implied spirit’ in this context do not seem to us to be reconcilable with the written evidence we have seen.

47. [Cross-referencing] The minutes of the board meeting of [Cross-referencing] record that ‘there had been no development on the purchase of Chester vehicles since the previous ([Cross-referencing]) Board meeting’.
48. In his oral evidence, [Senior Manager, Arriva] told us that his records showed that he had a meeting with [Senior Manager 1, FirstGroup UK Bus] on 27 September but that he could not recall the contents of what was discussed and that he had no further record of the proposed transaction aside from the letters he had received from [Senior Manager 1, FirstGroup UK Bus]. [Senior Manager 1, FirstGroup UK Bus] competition compliance record of [ commenter] suggests that no written response was sent by [Senior Manager, Arriva] to these letters. [Senior Manager, Arriva] told us that the routes on which the vehicles in question ran had not been served long enough by September/October 2007 for him to have been able to assess their performance.

49. We asked [Senior Manager, Arriva] whether there was any understanding between FirstGroup and Arriva that they would not reregister on the routes served by the vehicles involved in the transaction. [Senior Manager, Arriva] told us that there was no understanding because the transaction just was clearly going to go nowhere because there was no purpose to the transaction, as it was being proposed. [Senior Manager, Arriva] told us that although he had no further documents, it was his assumption that the proposal had involved the sale of an entire business, not just the sale of buses. However, the only contemporaneous documents we have seen in relation to this transaction (see paragraphs 41 to 44 above) refer only to the sale of buses (rather than any other assets or the transfer of staff). Arriva told us that ‘If you buy the buses and they’re operating on routes and then someone stops operating the routes, it is like a market sharing agreement’ and that there was ‘no way we [Arriva] would do that and there’s no way that FirstGroup would do that’.

50. In the 7 October submission, Arriva reiterated that whatever might have been [Senior Manager 1, FirstGroup UK Bus] understanding, it was nonsensical for Arriva to buy buses from FirstGroup, or FirstGroup from Arriva. The idea was taken no further and [Senior Manager, Arriva] had not even referred it to the legal department.
[Senior Manager 1, FirstGroup UK Bus] record of [the] telephone conversation with [Senior Manager, Arriva] states that [Senior Manager, Arriva] told [Senior Manager 1, FirstGroup UK Bus] that he had decided not to continue with the proposed sale of vehicles in Chester and the Wirral. [Senior Manager, Arriva] told us that he did not know why he did not proceed with it, but presumed that it was because the transaction did not make sense.

**Further transaction discussions**

52. A transaction between FirstGroup and Arriva involving Chester operations was also discussed subsequent to this proposed vehicle purchase in Chester and the Wirral. Between June 2008 and September 2008 there were a series of meetings between directors and other senior staff at Arriva and at FirstGroup, at which a possible acquisition (or set of acquisitions) was discussed.

53. Several possible areas of operation were noted by each party:

(a) [Senior Manager 1, FirstGroup UK Bus] told us that Arriva and FirstGroup were competitors in all but two areas.

(b) Arriva was interested in selling PVR. Arriva told us that although the note of the meeting on 11 June 2008 referred only to PVR, this in fact referred to a package of the depot and the business operating out of it, and that the reference to PVR was to identify the size of the business. We note that elsewhere Arriva had declined to pursue transactions based on routes or vehicles rather than businesses because it considered that these would be viewed as possible market sharing. We have reviewed an Arriva internal document which analysed the possible acquisitions and disposals. This document analysed each proposed acquisition/disposal in terms of the competitive environment, the strategic

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13 Arriva noted that reference to PVR was to identify the size of the business. See paragraph 53(b) below.
rationale, the financial trends and operational implications.\textsuperscript{14} The note of the meeting of 11 July 2008 noted that Arriva had not thought about this being on as large a scale as FirstGroup and therefore that Arriva would consider whether it wanted to take it further.

54. \[\text{\textsuperscript{13}}\]

55. \[\text{\textsuperscript{13}}\]

56. From 2009, FirstGroup implemented a programme called \[\text{\textsuperscript{13}}\] across its UK Bus business which was aimed at thinking radically about its services to find ways to be more profitable. In relation to Chester, this involved a team led by a member of the UK Rail finance team, \[\text{\textsuperscript{13}}\]. This project identified competition with Arriva as a key problem for the Potteries operating company, noting that both companies were likely making losses of £\[\text{\textsuperscript{13}}\] per year. The notion of territory and defence of this territory is evident in this quote from the Chester \[\text{\textsuperscript{13}}\] documents:

This is not a small territorial spat with Arriva. They probably regard our move to buy CCT as a hostile act and see their response as one of vital defence of their wider interests in the Wirral and other areas. They are not just doing it to try and win our bit of Chester—they are defending their stronghold!

57. Internal papers in relation to Chester \[\text{\textsuperscript{13}}\] looked at a number of options to address this problem (presentations of \[\text{\textsuperscript{13}}\]), including increasing aggression against Arriva, finding a ‘non anti-competitive way to persuade Arriva to relax’, selling Chester to Arriva, a partnership with CCC or agreeing a ‘strategic swap’ with Arriva.

\textsuperscript{14} The properties of this document indicate that it was created on 19 June 2008.
Further documents in relation to this project show that [x]. We do not have information on which, if any, of the actions proposed by [x] were taken.

**Partnership negotiations**

In August 2009, CCC phoned [x] to discuss a possible Voluntary Partnership Agreement (VPA) between CCC, FirstGroup and Arriva. In autumn 2009, [x] had various follow-up telephone calls with CCC, and on 6 January 2010 there was an initial meeting between CCC, FirstGroup and Arriva about the proposed VPA (meeting initiated by CCC). There were several further meetings throughout 2010 between the parties, and in September 2010 a VPA (labelled the ‘Bacon Pointer’ service) was introduced on routes 1/1A and 15/15A. There is no evidence to suggest that the approach to this VPA process was not in line with OFT guidance. The VPA provided for maximum frequencies on the routes and for interoperability of FirstGroup’s and Arriva’s tickets. We discuss this VPA in greater detail in Appendix J of the Provisional Decision on Remedies. FirstGroup told us that this VPA was initiated and led by CCC.

The impact of the partnership agreement on the operators is not known. However, in an internal document produced prior to the implementation of the partnership agreement, FirstGroup said that [x]. Arriva told us that it was looking increasingly likely that the services in Chester would cover their direct operating costs (though it is not clear what time period Arriva is referring to).

**Conclusions on Chester and the Wirral**

We draw a number of provisional conclusions about the evidence in relation to the events that took place in Chester and the Wirral between July 2007 and early 2009:

(a) There is evidence that operators have a notion of zones, territories or patches in which they operate and a sense of ownership of the revenue from these areas.
This is evidenced by notes in FirstGroup’s presentation which referred to events being more than a ‘territorial spat’ and is mentioned in [Senior Manager 1, FirstGroup UK Bus] conversation with [Senior Manager, Arriva]. Although [Senior Manager, Arriva] could not recall that conversation, we consider [Senior Manager 1, FirstGroup UK Bus] contemporaneous competition compliance record produced the following day to be reliable evidence of it taking place and of what was discussed.

(b) There is evidence that FirstGroup retaliated against Arriva for competition in Chester by registering a route in the Wirral (see paragraph 12) and that in response Arriva considered retaliating against FirstGroup in the Wigan area (see paragraph 17). In addition, there is evidence that the concept of retaliation was well understood by these two operators, as it was referred to on several occasions in the note of the conversation between [Senior Manager, Arriva] and [Senior Manager 1, FirstGroup UK Bus] on [ ].

(c) Linked to the concept of retaliation, the registration of routes appears to have been used as an attempted signalling strategy between the two operators. However, these signals do not appear to have been fully understood or acted upon.

(d) There was a proposed sale of vehicles by both operators that appears to have involved an implied understanding by FirstGroup that Arriva would not continue to operate on the routes served by the buses that it was selling. However, this transaction was not completed. A subsequent transaction involving Chester was contemplated but we understand that this transaction was not progressed following the commencement of the OFT’s market study into the local bus industry.

(e) Senior staff members at both organizations were aware of and involved in the decision-making for all of these events. [Senior Manager 1, FirstGroup UK Bus] and [Senior Manager, Arriva] appear to have been the main contacts between FirstGroup and Arriva in relation to both transactions, although we understand
that one of these was initiated by their respective CEOs. In addition, there were several conversations between [Senior Manager 1, FirstGroup UK Bus] and [Senior Manager, Arriva] that discussed various service registrations and FirstGroup’s UK Bus Board were also kept informed about one of the proposed transactions.

**Leicester**

62. A FirstGroup Competitor Analysis Paper analysing competitors in Leicester noted that FirstGroup competed with Arriva, Centrebus and Veolia in Leicester and Stagecoach and de Courcey on some inter-urban services that came into Leicester. FirstGroup told us that during 2007 and 2008, after a number of tender successes, Arriva successfully expanded its services in Leicester to compete head-to-head, with brand new vehicles, against a number of FirstGroup’s key routes. [✓] of FirstGroup’s local operating company in the Midlands from May 2007 and August 2007 noted that Arriva registrations had impacted on passenger numbers and/or revenue [✗].

63. FirstGroup told us that in response the local operating company registered and operated new services on different routes in direct competition with two of Arriva’s routes in Leicester where it had identified that there was a potential ‘gap’ in Arriva’s offering that, in combination with the operating company’s existing offering, could be commercially exploited. [✗]

64. A [✗] noted that Arriva reduced fares on its services [✗] and [✗] following FirstGroup’s registrations [✗]. FirstGroup told us that one of the [✗] new services was withdrawn due to poor performance, while the other remained and [✗]. Arriva continued to operate its services, [✗] and [✗], in competition with FirstGroup until May 2011.
65. We asked FirstGroup for all internal papers relating to [X], but it told us that it could not locate any. [X] Finally the email anticipated the risk from [X] that Arriva might retaliate, which [X] expected to be on another FirstGroup service [X] and referred to measures under way to protect that service, including retention of cross-city linkages and also referred to reorganization of supervision at Leicester.

66. [X]

67. [X]

68. [Senior Manager 1, FirstGroup UK Bus] note of [a] conversation with [Senior Manager, Arriva] on [X] (see paragraphs 25 and 26 above) also referred to competition between the two operators in Leicester. [Senior Manager 1, FirstGroup UK Bus] stated that [Senior Manager, Arriva] [X] that FirstGroup had registered services on the Wirral, in part because of Arriva’s reduced fares in Leicester. [Senior Manager 1, FirstGroup UK Bus] recorded that [Senior Manager, Arriva] responded by stating that the reduced fares resulted from elasticity work and that he was not aware that these services competed with FirstGroup and that he would do something about the fares in Leicester as he did not want an escalation.

69. In August 2007, Arriva put up some of the fares on the ‘traditional’ Leicester services, although it kept £1 promotional fares on recently-launched routes, as documented in an email from [Senior Manager, Arriva] to [X] and [X].

70. In its 7 October submission, Arriva stated that competitive pricing in Leicester continued and there was no change to Arriva’s pricing strategy after any deregistrations.
Proposed [X] transaction

71. Annex 3 contains two maps of Arriva’s and FirstGroup’s operations in [X]. These maps show that there were two towns in [X] where both operators had a network of services, [X].

72. Some of FirstGroup’s local operating company’s [X] mention competition with Arriva and with some smaller local operators. [X] Overall, however, the level of competition faced by FirstGroup in the area, including from Arriva, does not appear to be particularly active or fierce.15 [X]

73. As set out above in paragraphs 53 and 54, FirstGroup and Arriva discussed the possibility of FirstGroup acquiring Arriva’s [X] business and Arriva acquiring FirstGroup’s [X] business, as part of a wider discussion of possible transactions. [X]

74. [X]

75. [X]

76. FirstGroup’s internal documents do not contain much information on the rationale for the transaction involving FirstGroup’s [X] and Arriva’s [X] operations. [X]

77. We understand that the transaction would have involved FirstGroup withdrawing from [X] and Arriva withdrawing from [X].16 In paragraphs 71 and 72 above, we set out the evidence on the existing level of competition between FirstGroup and Arriva, and find that although competition was not fierce, FirstGroup and Arriva were each other’s main competitors in [X], with [X] being the principle areas of overlap. 

15 [X]
16 As evidenced by the assessment of pre-transaction overlaps in the context of seeking competition clearance.
transaction involving FirstGroup withdrawing from [X] and Arriva withdrawing from [X] would therefore have led to a removal of the main competition both operators faced across the county.
# Chronology of FirstGroup and Arriva service registrations, deregistrations, frequency changes, timetable changes and fares changes on overlap routes in Chester and the Wirral, February 2007 to September 2008

<table>
<thead>
<tr>
<th>Date</th>
<th>Timetable/service changes</th>
<th>Fare changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug 2006</td>
<td>Chester: CCC announces sale of CCT</td>
<td></td>
</tr>
<tr>
<td>Sep 2006</td>
<td>Chester: Arriva registers duplication of CCT network</td>
<td></td>
</tr>
<tr>
<td>Oct 2006</td>
<td>Chester: Arriva suspends registrations due to High Court challenge by CCC</td>
<td></td>
</tr>
<tr>
<td>Feb 2007</td>
<td>Wirral: FirstGroup registers a new service 39 which competes with a number of Arriva routes through the Birkenhead Tunnel and around Liskard/Leasowe</td>
<td></td>
</tr>
<tr>
<td>19 June 2007</td>
<td>Chester: FirstGroup and CCC announce the agreement of mutually agreed exclusive terms for the sale of CCT to FirstGroup, following the approval by the Secretary of State for Transport and the approval by CCC’s and FirstGroup’s executive boards</td>
<td></td>
</tr>
<tr>
<td>2 July 2007</td>
<td>Chester: Arriva commences operating services 1, 1A and 15 at 10-minute frequencies. These compete with CCT routes 1, 1A, 15, 15A. Arriva’s routes were registered in September 2006</td>
<td></td>
</tr>
<tr>
<td>6 July 2007</td>
<td>Wirral: Arriva registers services (\times) and (\times) to compete with FirstGroup’s service (\times). At the same time, Arriva registers service (\times) in Chester competing with FirstGroup’s service (\times).</td>
<td></td>
</tr>
<tr>
<td>Aug 2007</td>
<td>Chester: Announcement of FirstGroup purchase of CCT. FirstGroup takes over the CCT network, including those routes that compete with Arriva’s new service registrations. (\times)</td>
<td>Chester: Fares on competitive services are 50 per cent of the level of the fares prior to FirstGroup’s takeover of CCT. Fares on non-competitive services are in line with ‘First’ levels (Aug 2007 QBR)</td>
</tr>
<tr>
<td>20 Aug 2007</td>
<td>Wirral: FirstGroup begins operating its service (\times) which competes with Arriva’s service (\times)</td>
<td></td>
</tr>
<tr>
<td>Sep 2007</td>
<td>Chester: FirstGroup increases frequencies to match those of Arriva on the 1/1A and 15/15A, requiring 2 additional vehicles. FirstGroup also withdrew some ex-CCT loss-making routes (service 4, 28 and 35).</td>
<td></td>
</tr>
<tr>
<td>Sep 2007</td>
<td>Chester and the Wirral: Arriva begins running services 9 (Chester), 401 and 402 (Wirral) which compete with FirstGroup’s services 9 (Chester), 1 and 41/42 (Wirral). (\times)</td>
<td></td>
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<tr>
<td>Sep 2007</td>
<td>Wirral: Arriva commences services 441 and 470</td>
<td></td>
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<tr>
<td>Sep 2007</td>
<td>Chester: FirstGroup withdraws a section of service 3.</td>
<td></td>
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<tr>
<td>Sep 2007</td>
<td>Chester: FirstGroup registers new service 3/3A, which competes with Arriva’s services 1/1A and 15A in part</td>
<td></td>
</tr>
<tr>
<td>Oct 2007</td>
<td>Wirral: FirstGroup retimes service 39 which competes with various Arriva services (reasons unknown)</td>
<td></td>
</tr>
<tr>
<td>26 Oct 2007</td>
<td>Wirral: Arriva deregisters its services 470 and 441, which competed with FirstGroup’s Arrow Park to Birkenhead and Birkenhead to Mill Park services. The services are scheduled to cease running on 23/24 December 2007. [VOSA N and P records]</td>
<td>Deregistration and overlap also referred to in 2 November and 30 November Arriva NW operations reports.</td>
</tr>
<tr>
<td>Date</td>
<td>Timetable/service changes</td>
<td>Fare changes</td>
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<tr>
<td>------------</td>
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<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>29 Oct 2007</td>
<td>Chester: Arriva deregisters its service 9 which competed with FirstGroup’s service 9. The service is scheduled to cease running on 24 December 2007 [VOSA N and P records]. Deregistration also referred to in 2 November and 30 November Arriva NW operations reports.</td>
<td></td>
</tr>
<tr>
<td>Nov 2007</td>
<td>Wirral: FirstGroup retimes services 71 and 72 which compete with Arriva’s service 472 and a number of others.</td>
<td>[X]</td>
</tr>
<tr>
<td>Dec 2007</td>
<td>Chester: Arriva’s deregistration of service 9 comes into force (see 29 October 2007). Wirral Arriva’s deregistration of services 470 and 441 come into force (see 26 October 2007).</td>
<td></td>
</tr>
<tr>
<td>Jan 2008</td>
<td>Chester: FirstGroup changes the routing of service 3/3A which competes with Arriva’s services 1/1A and 15A in part (FirstGroup told us this was at the request of residents to serve an additional bus stop).</td>
<td></td>
</tr>
<tr>
<td>Feb 2008</td>
<td>Wirral: Arriva deregisters its service 402 and retimes its service 401 which competes with FirstGroup services 1 and 41/42.</td>
<td>[X]</td>
</tr>
<tr>
<td>Mar 2008</td>
<td>Chester: FirstGroup changes timetable and routing of its services 15/15A which competes with Arriva’s service 15A. FirstGroup registers new service 2 which competes with Arriva’s service 15A. FirstGroup changes timetables on its service 3/3A which competes with Arriva’s 1, 1A and 15A</td>
<td></td>
</tr>
<tr>
<td>Apr 2008</td>
<td>Wirral: FirstGroup deregisters service 39 which competed with various Arriva services.</td>
<td>[X]</td>
</tr>
<tr>
<td>May 2008</td>
<td>Chester: FirstGroup retimes its service 3/3A which competes with Arriva’s service 1/1A</td>
<td>Chester: Arriva increases fares. [X]</td>
</tr>
<tr>
<td>Jun 2008</td>
<td></td>
<td>Chester: FirstGroup ‘matched Arriva’s recent increase’, increasing fares by 10p single and 20p return [X]</td>
</tr>
<tr>
<td>Jul 2008</td>
<td>Chester: Arriva retimes its service 1/1A which competes with FirstGroup’s service 1/1A and 15/15B to accommodate a request from a school.</td>
<td>Chester: FirstGroup introduce a 10 Journey ticket [X]</td>
</tr>
<tr>
<td>Aug 2008</td>
<td>Wirral: FirstGroup deregisters service 32/33 which competed with Arriva’s service 432/433</td>
<td>Chester: FirstGroup competitive fares rise in line with other competitors’ price rises. Non-competitive fares rise by 4 per cent (doc D11)</td>
</tr>
<tr>
<td>Sep 2008</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nov 2008</td>
<td>Wirral: FirstGroup retimes its service 1 which competes with Arriva’s service 401</td>
<td></td>
</tr>
<tr>
<td>Nov 2008</td>
<td>Chester: Arriva registers a new Sunday service on its service 1 which competes with FirstGroup’s service 1/1A, FirstGroup told us that this new service was timed 5 minutes in front of its service.</td>
<td></td>
</tr>
<tr>
<td>Jan 2009</td>
<td>Chester: FirstGroup reduces the frequency on its services 1/1A and 15 which competed with Arriva’s services 1/1A and 15A. FirstGroup also retimes its service 3/3A (and renames it the 4/4A) which competes with Arriva’s service 1/1A.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Timetable/service changes</td>
<td>Fare changes</td>
</tr>
<tr>
<td>----------</td>
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<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Feb 2009</td>
<td>Wirral: FirstGroup retimes its services 1 and 3 which competes with Arriva’s service 401.</td>
<td></td>
</tr>
<tr>
<td>Mar 2009</td>
<td>Chester: FirstGroup withdraws the commercial daytime service of its service 15B (but retains the contracted evening and Sunday service) which competes with Arriva’s service 15A.</td>
<td></td>
</tr>
<tr>
<td>May 2009</td>
<td>Wirral: FirstGroup changes its service 1 which competes with Arriva’s service 401</td>
<td></td>
</tr>
<tr>
<td>Apr 2009</td>
<td>Wirral: FirstGroup withdraws the commercial evening service of its service 41/42 which competes with Arriva’s service 401 and a number of others.</td>
<td>Chester: Fares increased across the networks, except in Blacon where some fares are pegged at current levels.</td>
</tr>
<tr>
<td>Jun 2009</td>
<td>Wirral: FirstGroup increased frequency from 20 minutes to 10 minutes on part of its service 1 in the Wirral which competes with Arriva’s service 401.</td>
<td></td>
</tr>
<tr>
<td>Sep 2009</td>
<td>Chester: FirstGroup reduces frequency on a number of services. FirstGroup also deregisters certain services in response to a reduction/end of subsidy.</td>
<td></td>
</tr>
<tr>
<td>Dec 2009</td>
<td>Chester: Arriva launches a ‘highly competitive fares strategy in Blacon in the run up to Christmas’.</td>
<td></td>
</tr>
<tr>
<td>Jan 2010</td>
<td>Chester: Arriva continues a ‘free fare’ initiative. FirstGroup also continues its deal.</td>
<td></td>
</tr>
<tr>
<td>Mar 2010</td>
<td>Wirral: FirstGroup changes frequency to every 15 minutes on service 1 which competes with Arriva’s service 401</td>
<td></td>
</tr>
<tr>
<td>Aug 2010</td>
<td>Chester: Following the VPA in Chester (Blacon) FirstGroup replaces its service 2 with its service 15/15A and changes the timetable on the service 1/1A. These services compete with Arriva’s services 1/1A and 15/15A.</td>
<td></td>
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<tr>
<td>Sep 2010</td>
<td>Wirral: FirstGroup changes routes and timings of its service 71/72 which competes with Arriva’s service 472.</td>
<td></td>
</tr>
</tbody>
</table>
Chronology of meetings, conversations and correspondence between Arriva and FirstGroup staff, July 2007–September 2008

<table>
<thead>
<tr>
<th>Date</th>
<th>What happened</th>
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<tbody>
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<td>[●●]</td>
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</tbody>
</table>
FIGURE 1

FirstGroup’s network in Chester and the Wirral, as of October 2009
FIGURE 2

Arriva's network in Chester and the Wirral, as of October 2009
FIGURE 1

[●●]

FIGURE 2

[●●]